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OR

CHRONICLES AND MEMORIALS OF GREAT BRITAIN AND IRELAND

DURING

THE MIDDLE AGES.

U 54050. Wt. 1415.

THE CHRONICLES AND MEMORIALS

OF

GREAT BRITAIN AND IRELAND

DURING THE MIDDLE AGES.

PUBLISHED BY THE AUTHORITY OF HER MAJESTY'S TREASURY, UNDER THE DIRECTION OF THE MASTER OF THE ROLLS.

On the 26th of January 1857, the Master of the Rolls submitted to the Treasury a proposal for the publication of materials for the History of this Country from the Invasion of the Romans to the reign of Henry VIII.

The Master of the Rolls suggested that these materials should be selected for publication under competent editors without reference to periodical or chronological arrangement, without mutilation or abridgment, preference being given, in the first instance, to such materials as were most scarce and valuable.

He proposed that each chronicle or historical document to be edited should be treated in the same way as if the editor were engaged on an Editio Princeps; and for this purpose the most correct text should be formed from an accurate collation of the best MSS.

To render the work more generally useful, the Master of the Rolls suggested that the editor should give an account of the MSS. employed by him, of their age and their peculiarities; that he should add to the work a brief account of the life and times of the author, and any remarks necessary to explain the chronology; but no other note or comment was to be allowed, except what might be necessary to establish the correctness of the text.

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The Lords of Her Majesty's Treasury, after a careful consideration of the subject, expressed their opinion in a Treasury Minute, dated February 9, 1857, that the plan recommended by the Master of the Rolls "was well calculated for the accomplishment of this important national object, in an effectual and satisfactory manner, within a reasonable time, and provided proper attention be paid to economy, in making the detailed arrangements, without unnecessary expense."

They expressed their approbation of the proposal that each Chronicle and historical document should be edited in such a manner as to represent with all possible correctness the text of each writer, derived from a collation of the best MSS., and that no notes should be added, except such as were illustrative of the various readings. They suggested, however, that the preface to each work should contain, in addition to the particulars proposed by the Master of the Rolls, a biographical account of the author, so far as authentic materials existed for that purpose, and an estimate of his historical credibility and value.

Rolls House,
December 1857.

Year Books

OF THE REIGN OF

KING EDWARD THE THIRD.

YEARS XIV. AND XV.

Year Books

OF THE REIGN OF

KING EDWARD THE THIRD.

V-5

YEARS XIV. AND XV.

EDITED AND TRANSLATED

BY

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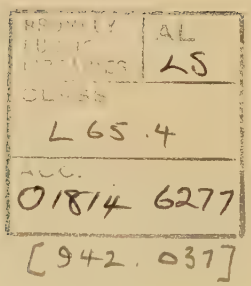

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INTRODUCTION.

INTRODUCTION.

Plan adopted in the three preceding volumes continued.

The plan on which the three preceding volumes were edited has been followed in this. Every case which occurs in the *Liber Assisarum* or in Fitzherbert's *Abridgment* has been traced and noted. The rolls have been searched, as before, for the records of the cases reported, and the foot notes and the Index of Persons and Places will show in how many instances the search has been successful, even where the reports are silent as to the names of the parties.

The MSS. used.

The MSS. which have been used for the text of the present volume are the Temple MS., the Lincoln's Inn MS., the Additional MS. in the British Museum numbered 25184, and the Harleian MS. No. 741. They have already been described in preceding volumes, but there are some points in relation to them which may need further notice. The Additional MS. No. 25184 does not contain any reports of the fifteenth year of the reign, and could not therefore be collated for the reports of Hilary Term.

The Harleian MS. is equivalent to two MSS. during a part of the period.

Although one MS. fails during a part of the period, another is, during a part of the period, almost equal to two. The portion of the MS. Harl. 741, which relates to Michaelmas Term, 14 Edward III., contains in many instances two reports or abridgments of the same case. Some of these agree with reports or abridgments in the Temple MS., beginning with No. 5 of the latter MS. They are not, however, in precisely the same order, as several other cases are interposed in the Temple MS. Of most of the cases so interposed there

are also different reports or abridgments occurring in a different order in the Harleian MS.; and sometimes the Harleian report appears to be an abridgment from the same source as the reports in the Lincoln's Inn MS. and the Additional MS. No. 25184. Sometimes also, when there is a report or abridgment common to the Harleian and the Temple MSS., there is another report or abridgment in the Harleian, and in that case usually a little fuller and with more frequent mention of names.

In using the Harleian MS. the following plan has been adopted. It has been, throughout the term, collated with the Temple MS. where collation was possible. All the cases which are reported in it, but not elsewhere, have been printed. A few cases which occur in it in two forms, and which occur only in it and in the Temple MS., have been printed in the two forms. It happens, however, most commonly that a form of report occurring only in the Harleian MS. is superior to other forms only in showing the names of the parties, and as those names can be more authoritatively ascertained from the record, the Harleian reports of this class have been omitted where the corresponding records have been found.

There are also in Hilary Term, 15 Edward III., a few cases of which there are two reports or a report and an abridgment in the Harleian MS., but it is needless to make any further general statement on the subject, as the foot notes show the facts in detail, and, where the reports are comparable, show how far the Harleian agrees with or differs from each report found in the Temple or the Lincoln's Inn MS.

Variation of Fitzherbert's *Abridgment* from the known MSS.

Attention has been called, in a preceding volume,[1] to the numerous instances in which there are found in manuscript independent reports of the same case differing *inter se*. As a rule the text of Fitzherbert's

[1] Vol. Y. B., 12 & 13 Edw. III., Introduction, xxiii–xxvii.

Abridgment could be traced to one or other of the MSS. now in existence. Some of the cases, however, which are printed in the present volume appear in Fitzherbert's Abridgment in a form differing considerably from that in which they occur in any of the MSS. above mentioned. This fact is a confirmation of the suggestion previously made that there was not any reporter whose authority was generally recognised, or that, if there was, he had many rivals who were not without patrons in the legal profession. It seems that reporting was an open profession, and that some Judges and Counsel possessed reports in one form, others in other forms.

The order of the reports.

As in previous volumes, the order of the reports in the Temple MS. has been followed in the text, in cases of which reports exist in that MS. To this rule, however, one exception has been made. The case numbered 109 in Michaelmas Term has been placed last in that term, and nineteen cases which do not occur in the Temple MS. have been interposed between it and No. 89. The reason is that in case No. 109 Willoughby appears as an accused person deprived of office, and in some of the intermediate cases as a Judge. To have placed the case anywhere but at the end of the term would therefore have been to suggest the idea that Willoughby was acting as a Judge while a prisoner.

A memorable period in English history: Presentment of Englishry abolished.

The fourteenth and fifteenth years of the reign of Edward III., though they have not attracted the special notice of historians, are in many ways memorable. In the fourteenth year one of the distinctions between the Norman or French ruler and the English subject was abolished by Statute.[1] The Presentment of Englishry, which had long survived the Conquest, upon which Bracton[2] dilated in the reign of Henry III., and which

[1] 14 Edw. III., St. 1, c. 4.

[2] Bract., 134, b.–135, b.

Fleta and Britton described in the middle of the reign of Edward I., had been for generations a degrading mark of servitude. The township or hundred was fined when any person was found slain within its limits, unless it could show that he was of English birth. The original object had been to prevent the murder of Normans or Frenchmen by Englishmen, which was, no doubt, frequent immediately after the Conquest. It served, however, afterwards to mark the difference between conquerors and conquered, a trace of which lingered still longer in the use of the French language in Courts of Justice and on solemn occasions. The inscription on the tomb of the Black Prince in Canterbury Cathedral, made in accordance with his own will, is a lasting monument of the pains with which the French language was cultivated at Court, even at a time when the Court did not despise the English of Chaucer. Perhaps there was never afterwards lavished so much care on a French memorial of anyone born in England. But, even many years after this, French was the language in which a petition was addressed to the Chancellor; and the Act by which an end was put to the Presentment of Englishry was not merely a formal recognition of a condition of society which had long preceded the enactment. It is, no doubt, recited that mischief had happened through ignorance as to Presentment of Englishry in some places, where fines had been inflicted by the Justices in Eyre for omission to make it. This may, however, be explained by the infrequency of the Eyres, by forgetfulness of the manner in which they should be met, and by the fact that the mode of presentment differed in different counties,[1] rather than by the existence of any difficulty in perceiving the difference between a French Prior and an English yeoman.

The King of England assumes

It was no mere coincidence that Presentment of Englishry was abolished in the year in which Edward III.

[1] See Bract., 135, b. The words of the Act are so explained in Staunf., *Cor.*, 18.

assumed the title of King of France, giving the title a place second to that of King of England. His claim, and the wars connected with it, had no small effect upon English society. He assumed the position of an English King ruling Frenchmen, which was the converse of that of the Conqueror, who had held the position of a French King ruling Englishmen. The pressing need of money for the purposes of the conflicts in which he was engaged prompted measures of conciliation to all classes of Englishmen from whom supplies could be extracted, and the Acts of the period commonly illustrate this policy, which was sometimes pursued in a manner not altogether consistent with dignity.

the title of King of France in the same year.

The Treasury was in a deplorable condition through the exhaustion caused by wars with the Scots as well as with the French. The King's jewels were in pawn;[1] the ordinary modes of taxation had been strained to the utmost; and it became necessary to devise some new expedient in order to carry on the government. Extraordinary taxes were as unpopular in the fourteenth century as they are in the nineteenth, and the manner in which they were imposed partook of the nature of a bargain. The Prelates, Earls, Barons, and Commons granted to the King, for two years, certain ninths—the ninth lamb, the ninth fleece, and the ninth sheaf in agricultural districts—the ninth of the goods and chattels of the inhabitants of cities and towns by assessment;[2] but the grant was not made without something in the nature of an equivalent.

Exhaustion of the Treasury: novel taxes.

Certain concessions, in fact, preceded the grant, taking the form of other Acts,[3] in which it was made to appear that the King, remembering the hardships endured by the people of his realm during the evil years of the wars, had great compassion for them, and was willing to

Concessions made by the King in return.

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[1] "*engagez.*" 2 *Rot. Parl.*, 121, (14 Edw. III., No. 26).

[2] 14 Edw. III., St. 1, c. 20.

[3] 14 Edw. III., St. 1, c. 2, &c.

show favour to them, so that they might the better aid him. At their request, therefore, he released and pardoned various arrears due, up to the time at which he had passed to Brabant, in relation to the chattels of felons and fugitives, escapes, fines, issues forfeited, trespasses contrary to the forest laws, reliefs and scutages, amercements for murder, and debts due to himself.

The abolition of Presentment of Englishry was one of these concessions.

The abolition of the Presentment of Englishry was, in fact, another of these concessions, and preceded the Acts in which the ninths and other taxes were imposed. It is recited in the Act in which the ninths were granted to the King that it was in consideration of these precedent Acts that the grant was made. It is plain, therefore, that, when the life of the Englishman ceased to be of inferior value to that of the Frenchman in the eye of the law, it was by special favour under exceptional circumstances, and that a high price was paid for the boon.[1]

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[1] There is a well-known passage in the *Dialogus de Scaccario* (Lib. I., c. 10) which may, perhaps, be cited in opposition to the above remarks. It is to the following effect:—"Now "(in the reign of Henry II.), as "the English and Normans dwell "together and intermarry, the two "nations are so intermixed (I "speak of those of free condition) "that Englishmen can hardly be "distinguished from Normans— "except only the *ascriptitii*, who "are called villeins." This statement can be interpreted only in one way. It cannot mean that the Normans had become assimilated to the English, because, if so, they would have become assimilated to the unfree as well as to the free. It can only mean that the free English (differing in that respect from the unfree) had become assimilated to the Normans, sharing their privileges and speaking their language. It was, of course, the fact that the Court, the courtiers, the lawyers, and all holders of important offices (whatever their birth) had to speak French, and it was the fact that some persons of English descent held office and went to Court. These may well have been said to be indistinguishable from Normans. These, however, constituted but a very small portion of the population, and it is incredible that the English tongue had ceased to be spoken except by the bondmen. Had that been so, the language could never have been revived except by a revolution such as never occurred. The text of the *Dialogus*, as printed by Madox from the copies in the Black Book and in the Red Book of the Exchequer

Nothing, however, could serve to make the new taxes popular. The tax-gatherer was believed to be and often was an extortioner. The more the taxes the wider was the field for his misdeeds. One of his devices appears to have been to levy the tax twice over. An example of this occurs in the present volume.[1] The collectors having already taken certain wool, as the moiety of wool shorn at a certain time, subsequently took other wool, and justified the taking as that of the same moiety. In this case the person aggrieved, having had a verdict given in his favour, recovered damages, and writs issued for the arrest of the collectors. From the complaints which were rife against all officers at this period, there is reason to believe that this was a typical and not by any means an exceptional instance of official misconduct.

Extortions by the tax-gatherers.

There were grievous complaints made in Parliament, on behalf of the clergy, to the effect that the collectors had demanded from them the ninths granted by the recent Act, when in fact they had already paid tenths of the same things, and that they were thus taxed twice over in respect of the same matters. As a temporary measure writs issued to the collectors directing them to stay these proceedings against the clergy.[2] It was afterwards agreed that "the Ninths and the Tenths granted "to the King should be paid in manner as they were "granted, that is to say that those who held of the "King by Barony and ought to come to Parliament, "by summons, should pay the Ninths, and the persons

Complaints by the clergy.

(of which he pointed out some of the imperfections), must be inaccurate in this as well as in other particulars. It cannot be reconciled either with later records or with the plain words of Bracton (134, b.–135, b.), of Fleta (Lib. I., c. 30), and of Britton (Lib. I., c. 2, § 15, and c. 7), which show the Presentment of Englishry to have continued in full operation, without distinction between free and unfree, at least as late as 1292—less than half a century before its formal abolition.

[1] Hilary, 15 Edw. III., No. 30.

[2] 2 *Rot. Parl.*, 119, 14 Edw. III., No. 14.

" of Holy Church who held nothing by Barony and " were not accustomed to be summoned to Parliament " should pay the Tenths. If, however, persons of " Religion or others of Holy Church had possessions " purchased and appropriated and not taxed among " their other temporalities, in the usual tax of the " Tenths, (it was agreed) in accordance with equity that " of these temporalities they were to pay the Ninths, so " that in respect of things for which they paid the one " they should not be compelled to pay the other." [1]

Payment of taxes anticipated by a forced loan.

So great were the King's necessities that he could not even wait for the payment of the Ninths according to the terms in which they were granted. Almost immediately after the passing of the Act the Earls of Arundel and Gloucester and "Monsieur" William Trussell came from beyond sea and represented in Parliament the mischiefs and perils with which the King was threatened, through his inability to pay divers large sums to the commonalties of towns in Flanders and Brabant and to individuals who were his allies, unless he should be more quickly aided than he could be by the levy of the Ninths. Parliament accordingly granted 20,000 sacks of wool to be taken proportionally without delay, in every county of England, in the hands of whomsoever the wools might be found, provided always that satisfaction should be made to every one, of whom the wools should be so taken, out of the first money arising from the Ninths of the second year.[2]

Society nearly disorganised.

There was thus a forced loan in addition to heavy and unusual taxes. Notwithstanding all the efforts made, the King was not successful in his foreign enterprise, and the elements of discord were multiplied on every hand. Laity and clergy alike were discontented by reason of the burdens imposed upon them,

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[1] *Rot. Parl.*, 15 Edw. III., No. 32.

[2] 2 *Rot. Parl.*, 120 (14 Edw. III., No. 19).

and the King was dissatisfied because even these burdens were inadequate to supply him with all that he needed. If the laity complained of the conduct of the King's officers, so also did the clergy; and the laity grudged even the ordinary payments to the clergy for commutation of penance, for probate of wills, and for performance of the marriage ceremony.[1] In short, society, such as it had been, was in danger of becoming completely disorganised, and it cannot be doubted that strong measures were required in order to effect a remedy.

Return of the King to England: Imprisonment of officers and issue of various Commissions.

Unsuccessful in his expedition abroad, and indignant that he had been compelled to abandon it at a moment when, as he believed, he might, if duly supplied with the means, have brought it to a prosperous issue, Edward III. returned unexpectedly to England.[2] He knew that there had been mismanagement in many places, and he suspected maladministration almost everywhere. He caused a number of persons, many of high position, to be imprisoned, and various Commissions to be issued for the purpose of enquiring into the supposed misdeeds of his officers. The enquiries were to extend over almost the whole field of the English body politic and social.

The agitation which was thus caused rises even to the surface of the reports themselves, commonly in some dry detail which would be unintelligible without illustration from other sources, but in one instance in a very striking and picturesque manner.

Arraignment of Willoughby

Willoughby, formerly Chief Justice of the King's Bench (or acting Chief Justice under Scrope), who had also been a Justice of the Common Pleas, and who had

[1] *Rot. Parl.*, 15 Edw. III., No. 24 and No. 33.

[2] On Nov. 30, 1340, as appears on *Rot. Lit. Pat.*, 14 Edw. III., p. 3, m. 11 (front and back), with a reference to the *Rot. Lit. Claus.*

(late Ch. J.) before Justices of Oyer and Terminer.

previously appeared in the reports as a Judge, appears in a report of Michaelmas Term, 14 Edward III.,[1] as a person accused of very heinous offences. He is brought before Justices of Oyer and Terminer in the custody of mace-bearers. He is reproached with having sold laws like cattle. He is not allowed to find bail, and he is led about from one county to another, a prisoner.

It is, however, necessary to look beyond the report for an explanation of the circumstances. The commission by virtue of which Willoughby was arraigned was a commission of Oyer and Terminer[2] (though not a commission "*ad inquirendum*"), directed to Sir Robert Parning (who had been Chief Justice of the King's Bench and had recently been appointed Treasurer), Sir Robert de Sadington (who was Chief Baron of the Exchequer), and Sir William Scot (who had just been appointed Chief Justice of the King's Bench). These appear to have been men on whose integrity the King supposed that he could in some sort rely, though, as will hereafter appear, not absolutely.

Other judges and high officers accused with him.

The commission was not to try Willoughby alone, but to try also Stonore (late Chief Justice of the Common Pleas), Shardelowe and Sharshulle (late Justices of the Common Pleas), whose names are familiar in the Year Books, Thomas de Ferrars, Nicholas de la Beche, Constable of the Tower, John de Pulteneye, Alderman of London, William de la Pole, late Baron of the Exchequer, John de St. Paul, and Michael de Wath (of whom the two last named had been Masters of the Rolls and joint Keepers of the Great Seal with Thomas de Baumburgh), John de Thorpe (who had been the *locum tenens* of the Treasurer in the twelfth year of

[1] Below, p. 258. Although the report appears as of Michaelmas Term, 14 Edw. III., the Commission of Oyer and Terminer was dated only the 12th of January, 14 Edw. III. (1340–1), less than a fortnight before the beginning of the Hilary Term next following.

[2] This appears on *Rot. Lit. Pat.*, 14 Edw. III., p. 3, m. 2 d.

the reign), Henry de Stratford, and Robert de Chigwell, late Clerks of the Chancery.

Nature of the Commission.

It is recited in the commission that it had come to the hearing of the King that these persons had, in the exercise of their respective offices, conducted themselves deceitfully and unfaithfully towards him and his people, and that he had therefore caused them to be arrested and kept in safe custody until enquiry should be made and justice done.[1] The manner in which the King became acquainted with the alleged facts was by common report and clamour of the people, and likewise through divers petitions presented against some of the accused before him and his Council as well in parts beyond sea as in parts within sea.[2]

The accused were to be arraigned singly, at the suit of the King, on the matters contained in the petitions. The Commissioners were also to hear and determine all other misdeeds committed by these ministers, in respect of which the Commissioners could have information, by means of inquisitions to be by them taken, or in other lawful manner,[3] whether at the suit of the King or at the suit of any other persons whatsoever desiring to complain or prosecute. All the Sheriffs of the Realm were to obey the Commissioners and cause jurors to come for the purposes of the enquiry.

Peers apparently sitting as assessors.

It will be observed that there appears in the report, as the name of one of those who constituted the Court, Lord Wake ("le Seignur de Wake"), although his name does not appear in the commission. As no commission or writ of association has been found, the explanation seems to lie in another record of a remarkable cha-

[1] Donec de eorum gestu et factis veritas plenius inquiratur, et justitia conquerentibus fiat in hac parte.

[2] Ex communi fama et clamore populi nostri prædicti, et similiter per petitiones diversas coram nobis et concilio nostro versus aliquos de prænominatis tam in partibus transmarinis quam cismarinis exhibitas.

[3] Unde per inquisitiones per vos inde capiendas vel alio modo legitimo formare poteritis. The words, though somewhat obscure, indicate, with sufficient plainness, that indictment was not to be considered necessary.

racter.[1] It is an enrolment of Letters Patent to the effect that Thomas Wake of Lidell and other "mag- "nates" and peers of the realm should not be accused, troubled, molested, or oppressed by the King, his heirs, or ministers (any more than they and their ancestors, peers of the realm, had previously been burdened or troubled in the time of the King or his progenitors) for certain causes. These were that they had taken upon themselves, at the King's request, for the advantage and tranquillity of the people of the realm, to sit and enquire touching damage and trouble caused to the King and his people by his ministers and others, and touching other acts in excess of authority.

Their names.

This instrument appears to indicate that the peers mentioned in it, whether by virtue of a general commission or otherwise, may have exercised the functions of assessors to the Commissioners of Oyer and Terminer, who had to try Stonore, Willoughby, and the other Judges. Each of them was named[2] in one or other of the "Grand "Commissions" described below. Though, however, the other Commissioners were numerous, the indemnity was granted to these alone. They were Baron Wake, Henry of Lancaster, Earl of Derby, and William de Bohun, Earl of Northampton (both kinsmen of the King), John de Veer, Earl of Oxford, Richard, Earl of Arundel, William de Clinton, Earl of Huntingdon, Hugh de Courtenay, Earl of Devon, Gilbert de Umfraville, Earl of Angus, Thomas de Berkeley (Baron Berkeley), Anthony de Lucy (Baron Lucy), and Robert de Clifford (Baron Clifford).

This may be accepted as a list of the leading men in England in whom the King had the greatest confidence for it seems clear that he did not implicitly trust any Commissioners who had not the special protection. It is even said that Wake himself was imprisoned for a short time on suspicion.[3] From the tenour of the commissions,

[1] *Rot. Lit. Pat.*, 14 Edw. III., p. 3, m. 3.

[2] *Rot. Lit. Pat.*, 14 Edw. III., p. 3, m. 2 d.

[3] 1 Walsingham (M. R. Series), 224.

indeed, it can hardly be supposed that the King had any reliance upon any holders of office in the kingdom.

Be this, however, as it may, Wake was clearly sitting on the Bench during the trial of Willoughby, and taking an active part in the proceedings. He was not disposed to listen with favour to any points of law which he might consider too technical; and he had adopted the principle that if the King made an accusation, whether rightly or wrongly, the proper course for the accused was to ask for pardon. The case, however, has points of general interest apart from the question of the guilt or innocence of any particular person.

Willoughby arraigned without indictment, on the "clamour of the people."

Not least remarkable among the features of the report of Willoughby's arraignment is the occurrence and repetition of the phrase "clamour of the people." Sir Robert Parning, who presided in the Court of Oyer and Terminer, addressed Willoughby in a tone not unlike that in which a judge in a French Court of Justice might now address an unconvicted prisoner. He stated the charge, and further alleged that the facts had "by clamour of "the people about the same" been shown to the King. Willoughby contended that there was technically nothing against him, because there was no indictment (the words *ad arenandum* being substituted in the Commission for the usual form *ad inquirendum*) and no suit by a party. Parning, however, repeated that the King was informed by clamour of the people, implying, of course, that this was sufficient accusation.

This was not the first time that the expression "clamour "of the people" had been heard in the Courts, but it was an expression of evil omen, and seems always to have boded that the settled laws of the realm were in danger. In the reign of Edward II. it was maintained that, if treasonable deeds were notorious and well known in the realm, the King might record the fact, and that when the fact was recorded judgment might be pro-

nounced, without trial, against the offender.[1] This doctrine, in which the extremes of democracy and despotism met, was modified in one important particular when applied to Willoughby's case. It was not asserted that the notoriety of any particular actions was sufficient to warrant judgment against the actor without trial, but only that it in itself constituted an accusation without the intervention of any of the usual forms.

He protested, but afterwards threw himself on the King's mercy.

Willoughby, it is clear, did not admit that even this modified proposition was law, but he did afterwards throw himself on the King's mercy because he would not plead with his liege lord. Lord Wake remarked that this was the wisest (*le pluis sage*) plea that Willoughby had ever pleaded. So it was, without doubt, in the interests of Willoughby's life and liberty and future welfare, but the circumstances would not justify the translation of the French words as "the "most learned." At that crisis law was one thing, policy another, and Willoughby judiciously bent to the storm. For this reason there appears to have been no express decision on the particular point which he had raised. Possibly, too, he may have been released in consequence of the agitation in Parliament and elsewhere caused by the proceedings on the numerous Commissions which issued about the same time.

He was accused of taking bribes from persons indicted: his view of the relations of Justices to indictors.

Among the most striking points in the proceedings against Willoughby are the statements made by others and by himself with respect to indictments. It was alleged that he procured the indictment of certain persons and stated to the indictors[2] that the persons indicted should not be delivered otherwise than by them, but nevertheless took bribes from the persons indicted for delivery by persons other than the indictors. Parning, who was presiding, said that, in cases of indictment, there should be upon the jury to try the accused both

[1] *Placita Coram Rege*, Hilary, 18 Edw. II., "*Rex*," R°. 34, d. (Harcla's case).

[2] *i.e.*, the jurors of the Grand or presenting Jury. See Stat. 13 Edw. I. (Westm. 2), c. 13, and 1 Edw. III., St. 2, c. 17.

indictors and others. Willoughby did not deny this, but threw the blame upon the Sheriff, whose duty it was to cause a good jury to come. Parning still maintained that, in the interest of the King, care should be taken to have indictors on the jury. Willoughby then tried to clear himself by saying that if there were none, it was at most but an error, and no indication of improper motive in the Justice. Counsel pointed out that this excuse would not serve, because Willoughby had acted differently in other cases. Willoughby, then, apparently referring to the allegation concerning his dealings with the indictors before the persons indicted were brought to trial, made this very memorable statement which seems to have passed unchallenged:—"It is the custom for a Justice to go to the "indictors to encourage and inform them."

Indictors legally sat on petty jury.

As to the fact that presenters or indictors commonly sat on the jury which tried the accused there need be no sort of doubt. The custom had descended from the earliest days after the abolition of Ordeal. It is strange, but it is perfectly clear, that little or no improvement had been effected in the trial of persons accused of criminal offences in the interval between the reign of Henry III. and that of Edward III. It is certain that the accused could still be tried by his accusers, or at any rate by a jury composed in part of his accusers. It was in accordance with law that he should in certain cases be allowed to challenge them, if he wished, but no less clear that in other cases a challenge was denied him. This is shown by the Rolls of Parliament of the period of these reports, as will presently appear.[1] It is, therefore, not at all difficult to believe that the King's Justices believed they were acting in accordance with their duty, in the interest of the King, when they went "to encourage" the indictors. One of the charges against Willoughby, it will be observed, was that he had done (though for bribes) precisely that which

[1] Below, p. lvi and pp. lxiii–lxiv.

from a modern point of view ought to have been done—that he had taken measures which debarred persons who had already made an accusation from finding a condemnatory verdict against the persons whom they had denounced.

Issue of General Commissions to enquire, hear, and determine.

It is not certain whether the whole of the Commissions which issued at this period were enrolled, and there is some reason to suspect that Baron Wake and the Peers mentioned with him may have had Commissions which do not appear on the Patent Roll. The Commissions, however, which do there appear are numerous, and are mostly a few days earlier in date than the Commission to arraign Stonore, Willoughby, and other Judges. Among the many Commissioners for the various counties were, in addition to the Peers already named and other persons, Sir Robert de Bourchier (the Chancellor), William de Kyldesby (the Keeper of the Privy Seal), Sir Robert Parning (the Treasurer), Sir Robert de Sadington (Chief Baron of the Exchequer), and Sir William Scot, who was appointed Commissioner just before his promotion to be Chief Justice of the King's Bench.

Every service, military, naval, legal, and fiscal, under suspicion.

In these Commissions maladministration was alleged against the Justices of the two Benches, of Forest Pleas, of Assise, of Gaol Delivery, and of Oyer and Terminer, Escheators, Sub-escheators, Coroners, Sheriffs, Under-sheriffs, and their subordinates, Taxors, Sub-taxors, Admirals and their deputies, Vendors, Assessors, and Receivers of the Ninths and other Subsidies, Barons of the Exchequer, Clerks of the Chancery, of the Exchequer, of the Receipt, and of other Courts, Keepers of Forests, Verderers, and their subordinates, Collectors of Customs, Controllers, Weighers of Wool, the King's Butlers and their deputies, Receivers of the King's money in the country, Masters of the Horse and their grooms, Stewards and Marshals of the Household of the King and of his son Edward, Duke of Cornwall, Clerks of the Market, Purveyors of the Household of the King, of his Court, and of the Duke of Cornwall, Keepers of Gaols,

Electors, Triers, and Arraiers of men-at-arms, hobelars, and archers, Bailiffs errant and others the King's Bailiffs and Ministers.[1]

The order in which the officers are mentioned in the Commissions has been observed in the paragraph next preceding, though it does not seem to follow any rational classification. It will, however, be seen that the Army, the Navy, the administration of Justice, and the collection and appropriation of the Revenue were all objects of suspicion.

Apart from the terms, "oppression, extortion, damage, "annoyance, and acts in excess of authority," there are more specific allegations relating, some apparently to the whole of the officers under suspicion, and others to those of particular departments. The charge of taking sums of money and other gifts which had been extorted by officers for the due execution of their offices, or in order that they might excuse or favour the givers, appears to be of general application; and the charge of omitting to answer to the King for sums of money received to his use appears to be hardly less extensive.

Particular stress is laid on evasions of the laws affecting wools, from which a considerable part of the revenue was derived. It was alleged that the King's officers and others had fraudulently exported, in large quantities, wools not duly cocketted, and with the customs and subsidy thereon unpaid. This was said to be to the grievous loss of the people, and to the manifest disadvantage and impoverishment of the State.

Enquiry as to maintenance, brigandage, &c.

Enquiry was also to be made as to maintenance and champerty, and all injuries done by means of conspiracies, confederacies, and pleas undertaken for a share of the matter in demand. The maintainors of false assises, pleas, and other plaints are coupled in the same sentence

[1] *Rot. Lit. Pat.*, 14 Edw. III., p. 3, m. 2 d, where it appears that several Commissioners were appointed for various counties.

with malefactors who went about armed in fairs, markets, and other places, public or private, beating, wounding, maiming, and extorting ransoms by threats of death and other duress.

And as to clerical officers.

The misdeeds of clerical officers were also not forgotten, and the power of the Commissioners extended to oppressions and extortions alleged against Archdeacons, Officials, Deans, Sequestrators, and their Commissaries and officers.

Courts of Oyer and Terminer: General and Special.

It is strange that, where terms of art are of so much importance as in the law, the definitions given in respect of Courts of Oyer and Terminer should differ so widely as they do in different places. The books do not agree in the statements which they contain with regard to the meaning of the words "general" and "special" as applied to these Courts. Coke, for instance, describes as Courts of Special Justices of Oyer and Terminer only Courts raised by the Statutes 36 Edward III., c. 4., 1 Richard II., c. 6., and 39 Elizabeth, c. 4. and c. 6.[1] Hale, on the other hand, says that Special Commissions of Oyer and Terminer are of several kinds,[2] and classifies them under six heads. One of his chief distinctions between the general and the special, however, appears to be that the General Commission applies to a whole county, and the Special to a particular town, hundred, or other precinct.[3] Again, the term Special Commission is commonly applied to a Commission issuing under special circumstances to try particular persons, as, for instance, the Commissions to try Anne Boleyn's alleged paramours, and many others in the *Baga de Secretis*.

General and Particular.

There is, however, a distinction drawn by Coke, and fairly maintained, between General and Particular Commissions of Oyer and Terminer.[4] In the far-reaching Commissions of the year 14 Edward III., above described,

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[1] 4 Inst., 166.
[2] 2 Hale, P. C., 10.
[3] 2 Hale, P. C., 10–23.
[4] 4 Inst., 162–3.

we have examples of the General Commission on the one hand, and in the Commission to try Willoughby and those mentioned with him (exceptional though it was), an example, on the other hand, of the Particular Commission.

Jurisdiction and proceedings on General Commissions of Oyer and Terminer.

It is not, however, easy to fix the time at which there arose the distinction between the General Commission of Oyer and Terminer and the Particular Commission. Both were, in the reign of Edward III., of very great importance, and throw much light upon the history of the law and of the people. Some of the proceedings on a General Commission in the forty-second year have been reported.[1] Among other matters it appears how one of the presentments made under the General Commission was that one J. S., of E., with the assent and aid of a certain "Monseigneur J. At Lee," had taken one T. S. with certain goods and chattels, and imprisoned him, and had subsequently conducted him to Gloucester Castle, and there imprisoned him for four weeks until he had made a fine to them of 40*l.*, of which he had to give 20*l.* to J. S. in part payment for his release. J. S. was put to make answer to this. He said that a Commission came from the Chancery to him and others to take T. and T.'s goods and chattels, and conduct T. to Gloucester Castle, by virtue of which he took and conducted T. thither, together with certain goods and chattels, that is to say, woollen cloths to the value of 100*s.*, which were taken by the constable of the town of T. and four other good men, and delivered to John Oliver, the Sheriff, by indenture between them, without this that he took any fine. And he demanded judgment whether in respect of that taking there was any tort. And he produced the Commission [from the Chancery]. And the Justices said that this Commission was contrary to law—to take a man and his goods, without indictment, or suit of party, or other due process. Therefore they retained the Com-

[1] 42 Ass., 5.

mission in their possession, and said that they would show it to the Council of our Lord [the King]. This illustrates in a remarkable manner the relations of the Council, the Chancery, and the Courts of General Oyer and Terminer.

It appears in this case and elsewhere[1] that, when the Commission was general in the fullest sense, it was to enquire into and hear and determine all treasons, felonies, conspiracies, champerties, grievances, extortions, deceits, and other offences or wrongs against the King and his people, as well at the suit of the King as at the suit of party.

The Statutes relating to Particular Writs or Commissions of Oyer and Terminer.

The Acts in which mention is made of Justices of Oyer and Terminer by that name are, like the later books, obscure in more points than one, and need careful comparison with those which have been supposed to refer to Justices of Trailbaston. In the Statute of Westminster the Second[2] it is enacted that a *writ* of Trespass "*de audiendo et terminando*" shall not be granted before any Justices except Justices of either Bench and Justices in Eyre, *unless* (*nisi*) for enormous trespass, when it is necessary to provide a speedy remedy. In the Statute of Northampton[3] it is recited that Commissions or writs to Justices[4] of Oyer and Terminer had been granted to persons procured by the parties concerned, contrary to the previous Act. It was therefore provided that Oyers and Terminers should be granted only before Justices of either Bench or Justices in Eyre, *and that only* in case of injury by violence[5] or horrible trespass, and by the King's special grace.

The most reasonable interpretation of these words seems to be that in its strict technical sense a writ of Oyer and Terminer was not general but particular,

[1] 34 Ass., 8.
[2] 13 Edw. I., c. 29.
[3] 2 Edw. III., c. 2.
[4] The French word translated "Commissions or writs to Justices" is "*Justiceries*."
[5] The French word translated "injury by violence" is "*led*."

in so far as it followed on the complaint of a particular person. Any one who felt himself aggrieved or had some animosity against his neighbour might, apparently, before the Statute of Northampton, have gone to Chancery and sued out a writ of Oyer and Terminer as of course. He might also, by representing that the matter was urgent, have excluded the Justices of either Bench, and procured nominees of his own to try his own case. The Statute provided an effectual remedy by requiring that, in all writs or Commissions of Oyer and Terminer, the Justices of either Bench or in Eyre should be named, and that the writs or Commissions should not issue as of course.

The difference between a Court sitting by virtue of a particular writ of Oyer and Terminer, and one sitting by virtue of a General Commission of Oyer and Terminer or Trailbaston.

Thus after the passing of the Statute of Northampton it was of the essence of a particular writ or Commission of Oyer and Terminer, under the second chapter, that the names of certain Justices, but not that the names of any other persons should be included. In the Commissions of Enquiry with powers to hear and determine, to which the names of Grand Commission and Commission of Trailbaston appear to have been given in the reign of Edward III., it was necessary, under the seventh chapter, that certain persons, in French termed "Grantz," and in Latin "Magnates," should be appointed together with *some* of the Justices of one of the two Benches, *or others* learned in the law.[1] The constitution of the Court would therefore, in ordinary course, have been widely different in the two cases, and might have been wholly different. A Court of Oyer and Terminer in its strictest sense might have consisted wholly of Justices of either Bench or Justices in Eyre, and a Court of Trailbaston wholly of Peers and Sergeants-at-Law.

For a special reason the words "writ or Commission" have been used above in relation to Oyer and Terminer, the word "Commission" in relation to Trailbaston. It

[1] See below, pp. xxxviii–xxxix.

seems to be certain that there could be no Trailbaston without a Commission under the Great Seal, but that there might be Oyer and Terminer by writ. There might also of course be Oyer and Terminer by Commission. It is asserted by Chief Justice Hale that the Justices of Oyer and Terminer in criminal cases could "not be by writ, but must be by Commission under the "Great Seal."[1] He appears to rely on a case, cited also by Coke,[2] in which a writ was directed to the Justices of Labourers, in the forty-second year of the reign of Edward III., to enquire of champerties, conspiracies, and the like. In virtue of this writ there was an indictment, but it was held by all the Justices of the King's Bench that all the proceedings were bad because the Justices had no warrant in the absence of a Commission.[3] It will be seen that this doctrine is quite in accordance with the fact that there was always a Commission by Letters Patent to Justices of Trailbaston who always had criminal jurisdiction.

The various forms of Commissions and Writs to enquire, hear, and determine.

A distinction has sometimes been drawn not only between Commissions of Trailbaston and other Commissions of Oyer and Terminer, but also between Commissions of Oyer and Terminer, and Commissions of Enquiry.[4] The fact, however, is that, as a rule, all were Commissions of Enquiry with certain variations in their scope, the Justices being appointed *ad inquirendum*, that is to say to take indictments or presentments. Sometimes, indeed, Commissions of Enquiry have been classed as Commissions of Oyer and Terminer even when the words *ad audiendum et terminandum* did not occur in them, as in the case of enquiry touching broken sea walls.[5]

These Commissions (or in some cases writs) took different forms, and appear to have acquired different names according to the shape in which they were drawn.

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[1] 2 Hale, C. P., 23.
[2] 4 Inst., 164.
[3] 42 Ass., 12.
[4] 4 Inst., 163.
[5] F. N. B., 258.

Thus the recital might be in general terms at the beginning (*quia datum est nobis intelligi*) and throughout (*quod diversa, oppressiones, extortiones, &c. sunt illata*). It might be in the like general terms at the beginning, and partly particular and partly general afterwards (*quod* A. *et* B. . . . . *ac alii ballivi* . . . . *se male gesserunt*). It might be in particular terms at the beginning (*ex gravi querela* A. *accepimus*) and in general terms afterwards (*quod quidam malefactores parcos fregerunt*). It might be in the like particular terms at the beginning and partly particular and partly general afterwards (*quod* B.C. *et* D. *et alii malefactores vi et armis insultum fecerunt*). It might be wholly in particular terms (*ex gravi querela* A. *accepimus quod* B. *bona et catalla ipsius* A. *vi et armis cepit et asportavit*). Even these forms were not immutable, but the general or particular facts or allegations might be differently expressed. In any case, however, the Justices were to enquire, and usually to hear and determine. The Commission to try Willoughby and others was exceptional, and was not strictly a Commission of Enquiry, being *ad arenandum* and not *ad inquirendum*, though it was a Commission of Oyer and Terminer.

Some Commissions of 14 Edward III. described by Coke as Commissions of Trailbaston.

It is worthy of notice that Coke in his chapter on the Court of the Justices of Oyer and Terminer has not mentioned the remarkable Commissions of the year 14 Edward III. as Commissions of Oyer and Terminer, but has, apparently, devoted three lines to them in his chapter on the Court of Justices of Trailbaston.[1] He states, however, in general terms, that Justices of Trailbaston sat by virtue of Commissions of Oyer and Terminer. In order to understand the matter it is necessary to dismiss from consideration the modern practice of directing Commissions of Oyer and Terminer, as of course, to the Justices of Assise. At the period of the

[1] 4 Inst., 187.

reports in the present volume the Justices of Oyer and Terminer were quite distinct.

Jurisdiction and Proceedings under Commissions of Trailbaston.

The Court of the Justices of Trailbaston was, so to speak, a connecting link between the ordinary Courts of Justices of Oyer and Terminer and the Court of the Justices in Eyre. Every Court of Trailbaston appears to have been a Court of Oyer and Terminer, though every Court of Oyer and Terminer was not a Court of Trailbaston. The ordinary functions of a Court of Oyer and Terminer, under a particular Commission, at any rate, were to hear and determine particular offences, or trespasses. The Court of Trailbaston seems to have had in addition some sort of general jurisdiction in actions between party and party, even where land was concerned, though there is nothing to show that this jurisdiction extended beyond cases of trespass.

There is a reported case of the second year of Edward III.[1] in which some question relating to land was brought before Justices of Trailbaston. In this the action was commenced by bill, and the defendant pleaded the general issue Not Guilty. A real action could not have been brought by bill, and the plea of Not Guilty could not have been pleaded by any tenant in a real action. There is, therefore, nothing to show that the Justices of Trailbaston had any such jurisdiction in common pleas as was possessed by the Justices in Eyre. It was, however, distinctly laid down that, so far as the authority of the Court of Trailbaston went, the Justices were, as it were, Justices in Eyre ("*sont en lour case "come Justices en Eire*").

The Statute of Rageman.

If, as has been commonly supposed, the Commission of Trailbaston was grounded upon the "Statute of "Rageman" it was a general and not a particular Commission of Oyer and Terminer, and it appears to have been regarded in this light in the earlier part of Coke's

[1] Y. B., Trin., 2 Edw. III., No. 15, p. 27.

chapter on Justices of Trailbaston.[1] In relation to this subject it is of some importance to set forth clearly what were the provisions of the so-called Statute of Rageman. It commences thus :—[2]

"It is agreed by our Lord the King, and by his "Council, that Justices do proceed throughout the realm "to enquire of, hear, and determine plaints and actions "for trespasses committed within these twenty-five years "passed before the feast of St. Michael in the fourth "year of the reign of King Edward, as well in respect "of the King's bailiffs and officers as of other bailiffs "and all other persons whatsoever, except appeals of "felonies and except plaints and actions pending else-"where before the King's Justices, or in the County "Court, by writ or without writ, so nevertheless that "they do hear and determine the causes brought before "them to determine. And this is to be understood "as well in respect of outrageous takings and of all "manner of trespasses, contentions, and offences against "the King and others mentioned in Inquests hereto-"fore made by command of the King, as of trespasses "committed since, and particularly of trespasses com-"mitted since, by any bailiffs whomsoever, against the "good men by whose oaths Inquests shall have been "made. And the King willeth that for relief of "the people and for speedy execution of justice the "plaints of every one, as well by writ as without "writ, be heard before the aforesaid Justices and "determined according to the articles delivered unto "the same Justices. And this is to be understood as "well within liberties as without." Offences against Statutes were also placed within the jurisdiction of the Justices. In cases in which imprisonment lay the provisions were :—"Let the trespassers be put by good

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[1] 4 Inst., 186.

[2] The French text given in the Statutes of the Realm has been independently translated. "The "Statute of Rageman" there appears under the year 4 Edw. I.

" mainprise to appear before the King at the Parliament " next following, if they can find mainpernors, and, if " not, let them remain in prison."

Coke remarks that the Commission under the Statute of Rageman had long since vanished, partly, as he supposes, on account of its reference to the next Parliament, and had been left out of the Register as not to be put in execution.[1] He, however, assigns the Statute of Rageman to the year 33 Edward I.,[2] confounding it with the *Ordinatio de Trailbastons*, or directions as to the mode of proceeding in Trailbaston, which appear on the Roll of Parliament of that year.[3] Its true date appears to be the year 4 Edward I. Moreover, there were certainly proceedings under it before the year 33 Edward I. There still exist records with the heading "*Placita* " *domini Regis de Quo Warranto et Ragemann*" of earlier date.[4] Many of the cases, though not all, were before Justices in Eyre. That, however, might well be, as the Commission of Trailbaston was nearly akin to the Commission to Justices in Eyre, and there was considerable resemblance between the two Courts.

It does, nevertheless, seem that another Act took the place of the Statute of Rageman early in the reign of Edward III. Both were restricted in application, to time past, and this fact may explain the complaints afterwards made as to the issue of commissions[5] touching matters of more recent occurrence.

The Statue of Northampton, c. 7.

The Statute of Northampton,[6] c. 7, though differing in some not unimportant particulars, has a very strong resemblance to the "Statute of Rageman." " As to the " punishment of felonies, robberies, homicides, trespasses, " and oppressions of the people committed in time past, " it is agreed that our Lord the King assign Justices in

[1] 4 Inst., 187.
[2] 4 Inst., 186.
[3] *Rot. Parl.*, 33 Edw. I., No. 10.
[4] Some are printed in the *Placita de Quo Warranto* (Rec. Com.).
[5] See below, p. lvi.
[6] 2 Edw. III.

" divers places of his realm, in addition to the King's " Bench (as was done in the time of his grandfather), of " magnates of the land, which be of great power, with " some of the Justices of one Bench or the other, or " others learned in the law, to enquire, as well at the " suit of party as at the suit of the King, and to hear " and determine all manner of felonies, robberies, homi- " cides, larcenies, oppressions, conspiracies, and griev- " ances committed against the people, contrary to the " law, statutes, and customs of the realm, as well by " the King's officers as by others, whosoever they be, as " well within liberties as without; and also to enquire of " Sheriffs, Coroners, Sub-escheators, Hundredors, Bailiffs, " Constables, and all other officers within liberties and " without, and of the officers under them, and to hear " and determine at the suit of the King and of party. " And our Lord the King and all the magnates of the " realm in full Parliament have taken upon them to " maintain the peace, to guard and save the King's " Justices, wheresoever the Justices come, and to give " aid by them and theirs, so that judgments and " executions be not hindered, but executed, and so that " misdoers shall not be protected or maintained by them " secretly or openly. But it is not the intent of the King " or his Council that by this agreement prejudice should " arise to the magnates of the land having liberties, or " to the City of London, or to other cities or boroughs, " or to the Cinque Ports, in respect of their liberties." [1]

Confusion, in Coke's references, between the General Commissions, the particular Commission to

Coke's mode of referring to the Commissions, which he describes as Commissions of Trailbaston, is somewhat obscure. It was no fault of his, however, that he was not imbued with the ideas of historical accuracy which prevail in the nineteenth century. He not unfrequently cited a worse authority when he might have cited a better. It has already been shown that he cited the

[1] Independently translated from the French text of the Statutes of the Realm.

try Willoughby, and a Commission appointing Justices in Eyre.

Red Book of the Exchequer for a record of the early part of the reign of Edward III. when the Red Book of his time contained only a not very accurate copy of the instrument made about the time of Henry VI.[1] So here, although he mentions the Patent Roll, he must have taken his information from some imperfect copy or calendar, and not from the roll itself. His words are :—[2] "A Commission of Trailbaston was granted to "Robert Parning, Treasurer, and others in London, "Middlesex, and Surrey, and like Commissions were "granted in other counties," and he refers to membranes 2 and 8 of the Patent Roll.

In the Commission relating to the three counties, Parning, though one of the Commissioners, is not the first named. He is the third, and the names of Sir Robert de Bourchier, the Chancellor, and of William de Kyldesby, the Keeper of the Privy Seal, stand before his.[3] On the other hand, Parning is the first named among the Commissioners for the arraignment of Stonore, Willoughby, and others,[3] and is also the first named of the Justices in Eyre at the Tower of London.[4] There is thus a confusion which it is somewhat difficult to disentangle. It may, however, be regarded as certain that Coke did not speak of the Commission by which the Justices in Eyre were appointed as a Commission of Trailbaston, for the following reasons. The Commission of the Eyre occurs on a different membrane [4] of the Patent Roll to either of those to which he has referred, and there is no reference in it to the three counties of London, Middlesex, and Surrey. Nor could he have spoken of the Commission relating to Willoughby and the others as a Commission of Trailbaston, because there is not in that any mention of the three counties. Indeed, there is some ground for suspecting not only that Coke

[1] Y. B., 14 Edw. III., Introduction, xx–xxi.

[2] 4 Inst., 187.

[3] *Rot. Lit. Pat.*, 14 Edw. III., p. 3, m. 2 d.

[4] *Rot. Lit. Pat.*, 14 Edw. III., p. 3, m. 4.

never saw the roll, but also that he was not aware that there had been a Commission to Justices in Eyre in the 14th year of the reign of Edward III., that the Eyre was held in the 15th year, or that Willoughby and other Judges and eminent men had been arraigned in a Court of Oyer and Terminer.

The Commissions of Trailbaston identified.

By a process of exhaustion, therefore, it is possible to arrive at the conclusion that the "Commission of Trail-"baston" to which special reference is made is that in which the Chancellor was the first-named Commissioner, and for the purposes of which a jury was to be summoned from the three counties of London, Middlesex, and Surrey.[1] This is confirmed by Coke's other reference, as similar Commissions relating to other counties do in fact appear on the membrane which he mentions.[2] So far, therefore, as Coke was acquainted with these Commissions or with abstracts or copies of them, it seems to have been his opinion that they were Commissions of Trailbaston.

The recital in these Commissions is in the general form, *quia datum est nobis intelligi*, and no particular individuals are named in them, though there is a long catalogue of officers who were supposed to have committed misdeeds in the exercise of their offices. There is good reason to believe that Commissions of this nature are rightly termed Commissions of Trailbaston. There is considerable resemblance in their forms to the language of the Statute of Northampton, c. 7, cited above.[3] There is a reference in that Act to the Commissions appointed in the reign of Edward I. There is also a stronger resemblance in that than in any other Act to the Statute of Rageman, which is commonly associated with the Commission of Trailbaston. Last of all, Commissions of Trailbaston (one of which has been

[1] *Rot. Lit. Pat.*, 14 Edw. III., p. 3, m. 2 d.

[2] *Rot. Lit. Pat.*, 14 Edw. III., p. 3, m. 8 d.

[3] pp. xxxviii-xxxix.

cited above[1]) become prominent in the Year Books[2] just about the time when the Act was passed.

They are Commissions of Oyer and Terminer of the most general kind, otherwise known as Grand Commissions.

If this reasoning be correct, the definition of a Commission of Trailbaston (whatever the meaning of the word Trailbaston may be) is a Commission of Oyer and Terminer of the most general kind. It might, perhaps, have differed in form according to the particular exigencies of the time at which it issued, and the attention of the Commissioners might have been specially directed to a particular class of offences, and even particular classes of officers at particular times; but it seems to have been always general in the sense that it contained no mention of any particular person as one to be tried. The Commissions which issued in the year 14 Edward III. were in the following year termed "Grand Commissions,"[3] and this seems to be a very correct mode of describing them. That kind of offence which might now be colloquially described as brigandage appears to have been always included in the jurisdiction.

An Eyre at the Tower of London.

Closely connected with "Grand Commissions," with the general charges of corruption, and, perhaps, with the accusations directed against the Judges, was the proclamation of an Eyre early in the fifteenth year of the reign. The Commission to Parning and his associates[4] is dated the 17th of January in the 14th year, and directs them to hold Common Pleas as Justices in Eyre, at the Tower of London, *hac vice*. They were also (as Justices in Eyre had previously done) to hear and determine matters relating to franchises, as well as trespasses, and the complaints of all persons complaining or desiring to complain of any bailiffs or officers of the King or his imme-

[1] p. xxxvi.

[2] Y. B., Trin., 2 Edw. III., No. 15, p. 27, and No. 21, p. 28.

[3] *Rot. Parl.*, 15 Edw. III., No. 62. Should any one prefer the translation "Great Commissions," it may be remarked that we do not speak of a Great Jury but of a Grand Jury.

[4] *Rot. Lit. Pat.*, 14 Edw. III., p. 3, m. 4.

diate predecessor or others, and to make sufficient amends in accordance with law and with the *Articuli Itineris* delivered to them. They were to commence their sittings at the Tower on Monday in the second week of Lent, and so did, as appears by the record.

Effect of the Proclamation of an Eyre.

At first sight it may appear a misnomer to describe as Justices Itinerant Justices who, by the terms of their Commission, were to sit only in one place and that the capital. The functions of the Justices in Eyre, however, were not simply to travel but to exercise a certain and peculiar jurisdiction. It was undoubtedly with a view to the creation of the jurisdiction that the Justices were appointed and the Eyre proclaimed. When the Eyre was in any county the jurisdiction of other Courts in the particular county was suspended,[1] excepting that of the King's Bench,[2] but not excepting even that of the Common Pleas.

Whenever Justices in Eyre were appointed a writ was sent to the Justices of the Court of Common Pleas directing them to adjourn all the pleas of the county in which the Eyre might be into the Court of the Eyre, to be there determined by the Justices in Eyre. Thus there appears on the Plea Roll of the Court of Common Pleas of Hilary Term in the fifteenth year of the reign of Edward III. the King's writ close[3] to the Justices commanding them to adjourn all pleas touching the citizens and other persons of the City of London before the Justices in Eyre appointed to hold common pleas at the Tower.

After the proclamation, the authority of the Court of Common Pleas over pleas of the county in which the Eyre was proclaimed ceased for the time absolutely. No proceedings of any kind, whatever the stage at which an

[1] 4 Inst., 185. As to the early functions of the Justices in Eyre see Bract., 115, b. *et seq.* Fleta, Lib. I., c. 19 *et seq.* Britton, Lib. I., c. 3 *et seq.*

[2] 27 Ass., 1; Staunf., *Cor.*, 35.

[3] *Placita de Banco*, Hil., 15 Edw. III., R°. 3 d.

action might have arrived, could be permitted. Even if a person sued on a Statute Merchant had been imprisoned, and had, upon showing indentures of defeasance, obtained a writ of *Audita Querela* directed from the Chancery to Justices of the Court of Common Pleas, they could not take any action whatever. They could not even summon the creditor with the object of adjourning him into the Eyre, but the Court of the Justices in Eyre would grant the writ of summons. It was said too, and the statement appears to be consistent in principle, that, when proclamation had been made, it was the Sheriff's duty to return all writs returnable in the Court of Common Pleas, not to that Court, but to the Court of the Justices in Eyre.[1] Moreover the custody of the Plea Rolls of common pleas in the Eyre was committed to a particular officer during the King's pleasure.[2]

The name of Parning, which, as already remarked, occurs first in the Commission of Oyer and Terminer to try Stonore, Willoughby, and others, occurs first also in the Commission appointing the Justices in Eyre, and the name of Scot, the recently appointed Chief Justice of the King's Bench, occurs in both. Thus, although the Justices of the Eyre were more numerous, they had among them the leaven of the other Court, and there was obviously a common object in these two Commissions and in the Commissions of Trailbaston.

Reasons for applying the powers of a Court of Eyre rather than of a Court of Trailbaston to London.

If it be asked why the City of London in particular was selected as the scene of an Eyre there are two answers to the question. In the first place, it was provided in the Statute of Northampton, c. 7, already cited, that no prejudice should arise to the City by reason of the Commissions mentioned in the Act. It therefore became necessary, unless London was to be

[1] Below, p. 312.

[2] *Rot. Lit. Pat.*, 14 Edw. III., p. 3, m. 3.

exempted altogether from the enquiries which were to be made, that some other mode of action should be employed against it. As has already been shown, the Court of the Eyre resembled in some respects the Court of Trailbaston, and, when a Commission of Trailbaston was inapplicable, it was only natural that a Commission to Justices in Eyre should be brought into operation. In the second place, the King had not been so well pleased with the recent conduct of the City authorities that he would be disposed to show them special favour.

The City, which had, since the expulsion of the Jews in the reign of Edward I., been, no doubt, regarded as one of the chief sources from which money could be caused to flow into the King's coffers in time of emergency, had recently conceded only a fourth of the King's demand for a loan, and that not without great reluctance and strong pressure.

On Ash Wednesday, in the fourteenth year of the reign of Edward III., a messenger came to Andrew Aubrey, the Mayor, requiring him, and the Aldermen, and the wealthiest persons of the City, to appear before the King and Council on the following Thursday. When they appeared the King desired them to lend him 20,000*l.* for the purposes of the war beyond sea. They prayed permission to consider the matter, but were required to be prepared with their answer on the next day (Friday). They agreed that they could not lend more than 5,000 marks, which sum they offered. The King refused it, and peremptorily commanded the Mayor, Aldermen, and Commonalty to be better advised on the matter, or else to bring the names of all the wealthiest citizens, in writing, before him and his Council at Westminster on the Sunday following, so that he and his Council might assess them as to the sum of 20,000*l.*

The Mayor and a number of the wealthiest men of the City met soon after sunrise on the Sunday, and

agreed, "although it was a hard thing and difficult to "do," to lend the King 5,000*l.*, should he be pleased to provide sufficient security for re-payment at a certain date. Sir John de Pulteney the Alderman, Andrew Aubrey the Mayor, and the Recorder waited on the King to inform him of the decision. The King graciously accepted the offer, having regard to the tallages and aids which the citizens had already paid him. He commended the citizens, to all appearance, in friendly manner; the assessment was made, and the money paid;[1] and the King said nothing, though he may have thought much, of the unlent 15,000*l.*

Smarting with the sense of failure, which he believed might have been averted had sufficient supplies been furnished to him, the King was, on his return to England in November, not unmindful of the reluctance which the citizens had shown to lend in the spring. The Eyre was an extremely disagreeable engine of punishment to any person or corporation holding any sort of franchise. The right to enjoy the accustomed franchises was immediately called in question. The highest persons in the county had to attend the Eyre, which, in the absence of the Court of King's Bench, enjoyed even higher functions than the latter Court, as it could hear and determine real actions, and all common pleas, as well as pleas of the Crown. It was, in fact, very nearly what the original *Curia Regis* had been before division. It was thus a very august tribunal, and was approached with fear and trembling, and with every outward demonstration of respect.

Course of proceedings in an Eyre at the Tower.

From the earliest times the Court of the Justices in Eyre, when it visited the City of London, appears to have been held at the Tower. It sat there in the

[1] Letter Book F., fol. xxxii, in the Archives of the City of London, printed by Henry Thomas Riley in "*Memorials of London and London* "*Life* in the 13th, 14th, and 15th "Centuries," pp. 208–210.

fifth year of the reign of Henry III.,[1] and again in the twenty-eighth year.[2] There also it sat in the fourteenth year of the reign of Edward II.[3] The formalities usual on the opening of the Eyre, as observed on the last-mentioned occasion, were the following. The "*probi* "*Barones*" of London sent six of their number to the Tower "ad Justiciarios Domini Regis welcomandos et "salutandos." They had to pray leave of the Justices to enter the Tower in safety and security, saving their liberties and customs. This the Justices granted. Then the Commission was read, and the business of the Eyre began. The citizens, however, set great value on their privilege of having their own porter, usher, and serjeants. They claimed to have their own porter outside the Tower gates, while the King's porter was within, and their own usher within the door of the hall in which the pleas were held (in order to introduce the "Barones" and other persons of the City who were known to him), while the King's usher was also within. They also claimed "quod habeant servientes "suos cum virgis suis, et quod nullus serviens domini "Regis se intromittat coram Justiciariis, de aliquo "quod ad officium servientis pertineat." So also in this Eyre of 14 Edward III. there was a similar claim with respect to the "hostiarius" or usher.[4]

Conclusion of the Eyre after one day's sitting, and grant of the King's pardon to the City.

It does not, however, appear by the record that anything of exceptional importance happened at this Eyre, and there is reason to suspect that all the Commissions came to a somewhat hurried conclusion. The Eyre, at any rate, seems to have sat on one day only. The Mayor and Commonalty of the City of London subsequently presented a petition that the King would be pleased to lay aside any rancour and indignation which he might have conceived by reason

[1] *Liber Albus* (Rolls Series), 62.
[2] *Liber Albus* (Rolls Series), 72.
[3] *Liber Custumarum* (Rolls Series), 285–432.
[4] The record of the Eyre.

of any trespass or excesses committed by them, and grant his pardon. To this he graciously acceded. They further prayed that the Eyre, as held on Monday in the second week of Lent, might be considered to be an Eyre concluded. This also the King granted, and granted further that no other Eyre should be held at the Tower of London within a period of seven years.[1]

Opposition of the Clergy to the King's policy: Excommunication of the King's advisers.

The difficulties of the King's position were at this time increased by the conduct of the Clergy and, in particular, by that of the Archbishop of Canterbury, John de Stratford, who had held the office of Chancellor. He, as alleged by the King, had, after advising the war with France, neglected his duties in the matter of supplies and so frustrated the King's plans at a critical moment. When the King summoned him to come and render an account he refused to appear except in Parliament.[2] He published certain articles of Excommunication in which were included all laymen who should lay violent hands on the persons, lands, goods, or houses of clergymen, all who should violate the liberties of Holy Church, all who should lessen the privileges granted to the Barons in *Magna Charta*, all who should falsely accuse him, or any Bishop or person of his Province, of Treason or any other crime.[3] He wrote to the King in a tone which was, from a modern point of view, by no means becoming in a subject addressing his sovereign. Denying the charges against him, he asserted that the King was surrounded by evil counsellors, and held up as a warning the fate of Edward II. Perhaps, he was not pleased to see his brother succeeded by the first lay Chancellor (Bourchier)

[1] *Rot. Lit. Pat.*, 15 Edw. III., p. 2, m. 47, printed in 2 Rymer's *Fœdera*, 1162.

[2] The King to the Pope. *Rot. Rom.*, 15 Edw. III., m. 4, printed in 2 Rymer's *Fœdera*, 1152–3.

[3] 2 Hemingb. (Eng. Hist. Soc.), 375–380; 1 Walsingham (M. R. Series), 238–240.

and a Bishop succeeded by a Judge (Parning) as Treasurer. He complained too that men of Church as well as others had been imprisoned. "And because such as be near "you or favour your cause are not afraid to lay "treason and falsehood to our charge we denounce "them to be excommunicate."[1]

This method of meeting an accusation by the excommunication of the accusers was not very novel and not altogether successful. It had, moreover, the effect of obscuring the more reasonable suggestion of the Archbishop that the Prelates, Peers, and Nobles of the realm should be summoned and make strict enquiry as to what had become of the supplies voted, and that no one should be deemed guilty of wrong-doing until his answer had been given, and due investigation had been made.

The Archbishop of Canterbury prays the King to release the imprisoned officers.

The Archbishop was especially indignant at the imprisonment of St. Paul, Wath, Chigwell, Thorpe, and Stratford (mentioned in the same Commission of Oyer and Terminer with Willoughby), all of whom were clerks. This, he said, in another letter[2] addressed to the King and Council, endangered the souls of those who gave their counsel or consent thereto. It is, however, only just to add that he prayed the King and Council to release not only them, but also all lay persons who were of free condition and had been taken and detained contrary to *Magna Charta* and the laws and customs of the realm.

The King justifies his conduct and threatens the Archbishop.

The King practically answered the Archbishop in certain Letters Close[3] (described in a subsequent instrument as "Letters Excusatory") in which he commanded the Bishop of London and other Bishops and Deans and Chapters of the Province of Canterbury to publish the statements therein set forth. He again

[1] MS. Cott. Claud., E. 8, fo. 252, printed in 2 Rymer's *Fœdera*, 1143; 2 Hemingb., 363–367; 1 Walsingham (M. R. Series), 231–233.

[2] 2 Hemingb., 369–371; 1 Walsingham, 235–7 (M. R. Series).

[3] *Rot. Lit. Claus.*, 15 Edw. III., p. 1, m. 46 d, printed in 2 Rymer's *Fœdera*, 1147–8.

threw the blame of neglecting to send supplies on the Archbishop, and pointed out the necessity of enquiring into the conduct of the Archbishop and other his officers. "Whereupon, directing our attention to the "chastening and correction of such our officers, we "have caused to be removed from their offices (as "well we might), some of them, whom for probable "reasons we suspected of maladministration, subversion "of justice, oppression of our subjects, corruption in "the way of receiving bribes, and other heinous "offences. Others also, of inferior degree, who were "to be blamed in respect of these matters, we have "caused to be detained in safe custody, lest by their "craftiness the execution of justice should be overturned, "and enquiry of the truth cunningly set at naught, "should they enjoy their accustomed liberty." As to the Archbishop himself, the King had commanded his presence, with a safe-conduct,[1] and without threatening or intending any mischief to him, and the Archbishop had refused to obey the command. The King recited many of the previous actions of the Primate, and added that should he "still persist in his haughty obstinacy "and stubborn rebellion" an opportunity would be found to cause his misdeeds to be made more clearly manifest.

The Archbishop holds to the excommunications, and declines to be tried by any secular judge.

The Archbishop made a very lengthy reply to the King, with copious references to the Scriptures. In relation to the sentences of excommunication which the Archbishop had directed to be published in places of resort, it had been charged that the Archbishop had designed to destroy the good repute of the King, to defame his ministers, to stir up sedition against him, and to alienate from him the hearts of Earls, Lords, and Barons. To this the Archbishop said that, inasmuch as it seemed to cast the crime of Treason upon his head where no King or temporal Lord could

[1] The safe-conduct appears in *Rot. Lit. Pat.*, 15 Edw. III., p. 1, m. 48, printed in 2 Rymer's *Fœdera*, 1146.

be his competent judge, he did not intend to prejudice his position, "but wholly to decline the trial of any "secular judge whatever."[1]

Thereupon the King sent Letters Close[2] to the Bishop of London and others, as before, in which he commanded them, notwithstanding any mandate of the Archbishop to the contrary, to publish the matters contained in his Letters Excusatory. Moreover, as the Archbishop was endeavouring to take away from him the jurisdiction which notoriously belonged to him, he forbade them to make any publications of the Archbishop's sentences of excommunication or any denunciations or monitions derogatory or prejudicial to his right and royal prerogatives, and commanded them that, if anything of the kind had been attempted, they should forthwith revoke it.

The King commands the withdrawal of the excommunications.

A few days previously the King had written,[3] in a tone not less firm to the Bishop of Exeter, reciting the misconduct of officers of the State. "Wherefore," said the King, "on our return into England, we caused certain of our "officers (whom we had under suspicion in this behalf, "for evident reasons,) to be taken and kept in safe cus- "tody in order that we might the more easily draw out "the truth as to their conduct. And we assigned our "Justices, in divers places and counties, to enquire "speedily, as the matter demands, touching the acts of "our officers aforesaid and others. And although it is "no part of our intention to infringe the liberty of "the Church, or unduly to oppress anyone, you never- "theless, in what spirit we know not, but with the "object of defaming Us and Ours, and of hindering our

And of all measures calculated to frustrate the execution of his Commissions.

[1] Birchington (*Angl. Sac.*), 34. This reply of the Archbishop is probably genuine, though Birchington's authority is not of the highest order. The document has been copied into Parker's *De Antiquitate Britannicæ Ecclesiæ*, and thence into Wilkins's *Concilia*.

[2] *Rot. Lit. Claus.*, 15 Edw. III., p. 1, m. 29 d, published in 2 Rymer's *Fœdera*, 1154–5.

[3] *Rot. Lit. Claus.*, 15 Edw. III., p. 1, m. 40 d, published in 2 Rymer's *Fœdera*, 1151–2.

" expedition, and of exciting against us clergy and people,
" as it appears, sent to our well beloved and trusty Hugh
" de Courtney, Earl of Devon, and his fellows, Justices
" assigned to enquire touching the acts of our said
" officers in certain counties, your letters patent con-
" taining denunciations and publications of sentences
" of excommunication, and monitions which were in-
" jurious and very prejudicial to the right of our Crown
" and our royal dignity."

The King declared this to be an attempt to deprive him of the jurisdiction which belonged to him. He said further, that, whereas it was of urgent importance that the enquiry touching the officers should proceed with the utmost despatch, the Bishop had been too ready to inhibit the Justices from swearing anyone during Lent to speak the truth in the premises, when for reasons so strong and for avoidance of such pressing danger it had been meritorious to swear and speak the truth at any time, especially as delay imperilled the enquiry and its execution.

The Bishop was therefore commanded (considering the nature and danger of the times) to revoke at once the denunciations and sentences of excommunication, and monitions, and all proceedings whereby the King's progress beyond sea and the enquiry and its execution might be delayed, or the King's lieges be excited against him. "And unless you are careful so to do, we shall
" take all such measures as of right we may against
" you, as our enemy, and rebel, and a disturber of the
" peace of our realm."

Reconciliation of the King with the Archbishop.

During the session of Parliament, on Monday, in the Quinzaine of Easter, in the fifteenth year of the reign, the King came into the Painted Chamber, and thither came also the Archbishop of Canterbury and the other Prelates, and the Magnates, and Commons. And there the Archbishop humbled himself before the King. He then prayed the King to grant that, inasmuch as he was

notoriously defamed throughout the realm, he might be arraigned in full Parliament before the Peers, and there answer. To this the King consented, but said he wished business touching the state of the realm and the common weal to be first set in order, and other business afterwards.[1]

Two years later, however, the King commanded that all matters touching the arraignment of the Archbishop should be annulled and set aside as being neither reasonable nor true.[2] Thus the Archbishop was received again into favour and the quarrel was apparently forgotten. The King, however, though strong in will and firm of purpose, was in no condition to alienate permanently a body so powerful as were still the clergy of England. It is by no means impossible that the somewhat abortive ending of all the Commissions which had issued may have been to a very considerable extent due to clerical influence.

The innocent confounded with the guilty at this period.

It might, perhaps, be thought, from a modern point of view, that accusations touching every officer and every kind of office refuted themselves by the assumption of universal guilt, and therefore the state of society could not have been such as the Commissions of Eyre, Trailbaston, and Oyer and Terminer would imply. This opinion might be plausibly supported by the fact that many of the persons accused were subsequently reinstated in office. The Common Pleas Judges returned to their previous places two years afterwards, Stonore as Chief Justice, Sharshulle, Shardelowe, and even Willoughby as Justices, and it does not appear that very severe punishment was inflicted in other cases.

Probable innocence of Stonore, Ch. J.

There is, without doubt, good reason to believe that the persons who were accused were not all equally guilty. Stonore, in particular, was a man of whom it

[1] *Rot. Parl.*, 15 Edw. III., No. 8.

[2] *Rot. Parl.*, 17 Edw. III., No. 22.

is impossible to believe that he was not of as high integrity as any of his contemporaries. He was certainly not a self-seeker, certainly not a man who feared to do right at the risk of making powerful enemies. In the very important case of *Staunton* v. *Staunton* he evidently maintained his own opinion in opposition to the direction of Parliament, and absented himself from Court when a decision was to be given which was contrary to his own convictions.[1] Had he been bribed, it is hardly to be supposed that he would have considered himself bound to uphold the cause of the bribers at the risk, or rather with the certainty, of placing himself in a most unenviable position in the eyes of the Council and the Parliament. In the only act of his private life with which there is reason to believe that we are acquainted he appears in the light of a benefactor. He enriched a nunnery, and at the same time made provision for his daughter and sisters, one of whom subsequently became the Prioress.[2]

A man of the stamp of Stonore would, in such an age as that in which he lived, probably have many accusers as soon as there appeared to be an opportunity of doing him an injury. The greater the corruption of the times, the more certain was it that the innocent would be confounded with the guilty. It is when mankind is at its worst that the worst things said of it are most true. Then, if ever, are applicable the words of the satire :—

" Wrong'd shall he live, insulted o'er, oppress'd,
" Who dares be less a villain than the rest."

The general corruption not therefore disproved.

Nevertheless, the fact that some persons may have been accused who were, according to the code of morals of their day, of exemplary character, does not in any way disprove the general corruption, but is, on the contrary, rather a proof of it. Moreover, the greater the

[1] Y. B., Mich., 13 Edw. III., No. 15, p. 36. And see Introduction to Vol. Y. B., 13 & 14 Edw. III., p. xl.

[2] See Y. B., 12 & 13 Edw. III., Introduction, cxiii–cxv.

corruption, the more difficult must it be to convict those who are really guilty of it, because all the guilty persons have a common interest in shielding those as guilty as themselves, and are not restrained by any scruple from attempting to throw the blame on the guiltless.

Unpopularity of the Eyre, Trailbaston, and Oyer and Terminer.

Thus if, on the one hand, the issue of the Grand Commissions, Commissions of Oyer and Terminer, and Commission to Justices in Eyre indicates a belief in widespread corruption as well as in a general disposition to set the laws at defiance, the manner in which they were received, on the other hand, does not show that either Lords or Commons were very earnest in desiring any complete reform. Lords and Commons, not unnaturally perhaps, had a greater regard for their own particular interests than for any abstract ideas as to good government and official integrity. The Commissions and the proceedings on them, too, were not untainted with the general laxity, and thus gave a legitimate ground of complaint.

Complaints regarding them in Parliament.

Willoughby had without doubt public opinion in his favour when he protested against his arraignment because there had been no indictment, and nothing alleged against him at the suit of a party. The Commons complained[1] in a strain not altogether unlike that of the Clergy that the Great Charter, the Ordinances, and the Statutes had been discredited in many ways, and less well kept than they ought to have been, to the great peril and prejudice of the King and damage of his people, inasmuch as clerks, peers of the realm, and other free men and persons of estate had been arrested and imprisoned without having been either appealed or indicted, and without any suit of party having been affirmed against them. Therefore it was prayed that the persons who had suffered might be delivered from gaol, and

[1] *Rot. Parl.*, 15 Edw. III., No. 9.

restored to their estates so that each might stand to the law according to his condition.

All this was reasonable enough, though, from a modern point of view, the prejudices of class were even here brought out in strange relief. Some of the other complaints in Parliament were also, from the point of view of those who complained, not unreasonable. The scope of some of the Commissions which had issued was, according to the statements which appear on the Rolls of Parliament,[1] to enquire touching officers who were Peers of the Realm, as for instance the Chancellor and the Treasurer. A very strong protest was made against arraigning Peers or bringing them to judgment except by their Peers.[2] It was said further that power was in certain Commissions given to enquire touching divers general points of an Eyre in a manner not usual without the assent of Parliament, and that the Justices appointed had put officers convicted before them to grievous fines without regard to the extent of the offences. They had, as alleged, charged the Sheriffs to return [to serve on the juries] all free men, as well lords of vills as others, without any distinction between residents and non-residents, and had charged the Sheriffs to answer for issues to the value of the lands of those who did not appear, even though non-resident. The persons indicted before them had not been able to obtain an acquittal otherwise than by verdict of those who had made the indictments, and had not been allowed to challenge these indictors. It was therefore prayed that the King would revoke whatever had been put in force contrary to law and usage, and cause that which had been done by the Commissioners contrary to law to be redressed. It was further prayed that, should the King be pleased to issue other and lawful Commissions, with the assent of his

[1] *Rot. Parl.*, 15 Edw. III., No. 14.

[2] *Rot. Parl.*, 15 Edw. III., No. 7.

Parliament, in respect of the points in which he might feel himself aggrieved by his officers or others, men learned in the law and others of the country who had knowledge of the conduct and condition of the officers in the respective offices might be appointed.[1]

The complaints tainted with class and local prejudices.

In this last prayer there is, as elsewhere, an obvious desire that the general laws of the realm should not override local influences and local prejudices. Impartial enquiry is clearly deprecated, and it is plainly suggested that if a man is strong enough to hold his own in his own neighbourhood there ought to be no interference from any other quarter.

Prayer for the repeal of the "Ordinance of Northampton."

Perhaps, however, the most remarkable demand made by both Lords and Commons had reference to the conservation of the peace. This they evidently considered of less importance than the danger to turbulent persons of good estate which might ensue from the "Ordinance" of Northampton. "Whereas it was agreed," they said, "for a time, by the Magnates of the Realm being in "Northampton, in order to maintain the peace while "the King was beyond sea, that thieves and ill-doers "being of ill fame and notorious should be attached, "and that, after attachment, enquiry should be made "concerning them, and under cover of this Ordinance "other attachments have been often made on persons of "another condition, therefore the said Magnates and "Commons pray that the said Ordinance be repealed, "and utterly annulled."[2]

It is not clear to what "Ordinance" this reference is made. It can hardly be to the Statute of Northampton passed in the second year of the reign, because the King was not at that time proceeding beyond the sea, and because the words quoted are not in precise accordance with any chapter of the Statute. Nevertheless, though not in precise accordance, they approach somewhat closely to those of the sixth chapter which confirmed the

[1] *Rot. Parl.*, 15 Edw. III., No. 14.

[2] *Rot. Parl.*, 15 Edw. III., No. 13.

Statute of Winchester (13 Ed. I., Stat. 2.), c. 14. It happens, too, that the 5 Edward III., c. 14, which was made not at Northampton, but at Westminster, three years after the Statute of Northampton, corresponds still more nearly with the alleged tenour of the Ordinance of Northampton. "Divers robberies, homicides, and felonies, have "been lately committed by persons called Roberdesmen, "Wastors, and Drawlatches. Therefore it is agreed and "enacted (*establi*) that if anyone have suspicion of ill in "respect of any such persons, be it by day or be it by "night, they be immediately arrested by the constables "of towns . . . . and kept in prison until the coming "of the Justices assigned to deliver gaols."

If, as seems to be implied, there was an Ordinance of Northampton subsequent to this Statute, it may have been made during the Parliament at Northampton in the twelfth year of the reign.[1] Still it could hardly have involved any serious grievance, real or imaginary, beyond those involved in the previous enactments. Whatever the facts of the case may have been, however, it was an accepted axiom about this period that an "Ordinance" was of a more temporary nature than a Statute,[2] and a prayer for the repeal of the "Ordinance" might have been regarded as more reasonable than a prayer for the repeal of the Statutes.

The King assents to this and other prayers of Lords and Commons —the Chancellor, Treasurer, and Justices protesting.

It appears by the Rolls of Parliament that the King expressly agreed to many of these petitions, and in particular to the repeal of the obnoxious "Ordinance" of Northampton.[3] The whole proceedings, however, were most remarkable. It is said that, on the King's answer, "the underwritten Statutes [including 15 "Ed. III., Stat. 1.] were made by the Magnates and "Commons and shown to our Lord the King," and that they were "read before the King." The Chancellor, however, and Treasurer, and some of the Justices

[1] This is mentioned by Knighton, 2572.

[2] *Rot. Parl.*, 37 Edw. III., No. 39.

[3] *Rot. Parl.*, 15 Edw. III., No. 39.

protested that they did not assent to the making or to the form of the Statutes, and that they could not observe the Statutes if contrary to the laws and usages of the realm which they were sworn to keep.[1]

This protest was practically to the effect either that the law could not be changed by an Act of Parliament, or that there could not be a good and operative Act of Parliament if the Chancellor, Treasurer, and Judges were opposed to its provisions. In either case it was not a mere *brutum fulmen*. It seems to have been used for an important purpose, and to have been of material service in the subsequent repeal of the first Statute of 15 Edward III.

The King assumes, in a writ of Proclamation, the right to revoke the Statute thus made.

Before the year had expired the King took measures to repudiate the Statute by means of a writ or Letters Close directed to the Sheriffs of all the Counties of England. He did not, it will be observed, forget to mention that protests had been made.[2] The whole instrument, however, is so remarkable that it will best speak for itself.[3] "The King to the Sheriff Greeting. Whereas "in our Parliament, called together at Westminster, in "the Quinzaine of Easter last past, certain articles ex- "pressly contrary to the laws and customs of our realm "of England and to our Royal rights and prerogatives "are pretended to have been granted by us by manner "of a Statute, We, considering how we are bound by the "bond of our oath to the observance and defence of such "laws, customs, rights, and prerogatives, and providently "willing to call back to due state those things which

[1] *Rot. Parl.*, 15 Edw. III., No. 42.

[2] It appears more clearly in Letters Close which he sent at the same time to the Archbishop of Canterbury that he himself (as well as the Chancellor, Treasurer, and Judges) made some kind of protest. *Rot. Lit. Claus.*, 15 Edw. III., p. 3, m. 25 d. (Printed by Brady, App., 83.

[3] *Rot. Lit. Claus.*, 15 Edw. III., p. 2, m. 1 d, printed in 2 Rymer's *Fœdera*, 1177. The instrument, as directed to the Sheriff of Lincoln, is also enrolled on the Statute Roll, and printed in 1 Stat. Realm, 297, but has been independently translated above.

" are so improvidently done, have had counsel and
" discussion thereupon with Earls and Barons and
" others, learned men, of our said realm. And (because
" we never consented to the promulgation of the said
" pretended Statute, but, after protestations had been
" set forth in advance touching the revocation of the
" said Statute, in case it should in fact proceed, we,
" in order to avoid the dangers which it was feared
" would arise by the rejection of the same, inasmuch
" as the said Parliament had otherwise been dissolved
" in discord without any despatch of business, and so our
" arduous affairs had in all likelihood been brought to
" ruin, which God forbid, did dissemble, as beseemed us,
" and did permit the said pretended Statute to be sealed
" *illa vice*) it appeared to the said Earls, Barons, and
" learned men that, inasmuch as the said pretended
" Statute did not proceed of our free will, it was null and
" ought not to have the name or force of a Statute. And
" therefore, with their counsel and assent, We have
" decreed it to be null and have thought good that
" it be annulled in so far as it did in fact proceed,
" willing, nevertheless that the articles contained in the
" said pretended Statute which have been heretofore
" approved by other Statutes of ourselves or of our
" progenitors Kings of England be observed, as is
" fitting, in all things according to the form of the
" said Statutes. And this we do only for the conser-
" vation and restoration of the rights of our Crown,
" as we are bound, and not that we may in any wise
" oppress or burden our subjects whom we desire to
" rule with clemency. And therefore we command
" you that you cause all these things to be publicly
" proclaimed in places within your bailiwick in which
" it shall seem to you expedient. Witness the King
" at Westminster the first day of October in the
" fifteenth year.

" By the King himself and Council."

In relation apparently to this writ Coke has observed in a note :—[1] "Where the printed books suppose that there "was another Parliament *in anno* 15 E. 3, whereby "the former Statute was repealed, the truth is the Par- "liament was holden at Westminster 15 Pasch. an. 17 "E. 3." There, no doubt, were printed books in Coke's time, in which it was supposed that "by another Sta- "tute made 1 *Octobris anno* 15 *Edward* 3 the foresaid "Statute was repealed because it was made without "the King's consent." The fact, however, that the editors of these printed books may have failed to distinguish between a writ or Letters Close and a Statute does not efface the existence of the writ or in any way diminish its importance.

The writ incorrectly described in the old books as a Statute.

It was evidently claimed in this writ that the King might, with the advice and consent of a Council selected by himself, upon statement of sufficient grounds, revoke a Statute or declare it null. The importance of this claim in the history of the constitution can hardly be over-rated, and it is strange that Coke should have missed the point. It is doubly strange because the passage in the Rolls of Parliament to which he refers indicates that the claim was contested.

The right therein claimed not admitted.

Had the writ to proclaim the revocation or nullity of the Statute been commonly acknowledged as good and sufficient, it is clear that there would have been an end of the matter. It is no less clear that the subject was subsequently discussed in Parliament, and that Parliament supposed itself to have some interest in the consideration of its own acts. Neither the protests which had been made nor the wishes of the King and his Council were set at nought, but Parliament agreed (and in so doing asserted the right to a voice) that the Statute "shall be wholly repealed, and annulled, "and lose the name of a Statute, as being prejudicial

Formal repeal of the Statute by Parliament.

[1] 4 Inst., 52.

" and contrary to the laws and customs of the realm, and " to the rights and prerogatives of our Lord the King; but " for that some articles are comprised in the same Statute " which are reasonable and in accordance with law, it is " agreed by our Lord the King and his Council that of " such articles and others agreed in this present Parlia- " ment there be made a Statute anew by the advice of the " Justices and other learned men, and kept for ever." [1]

Recognition of the right of the Justices to pronounce whether a proposed Statute ought to become operative.

Even in this formal agreement that the Statute should be repealed there appears a recognition of the right of the Justices to pronounce whether a proposed Statute was in accordance with the laws and usages of the realm, and consequently whether it ought to become operative as a Statute. Justices had in the first instance protested against the Statute, and in the end it was agreed not only that the Statute should not be law as a whole, but that any parts of it which might be thought good and reasonable should be embodied in a Statute only with the advice of the Justices. There seems thus to be hardly any possibility of doubt that, in the reign of Edward III., the persons who had to administer the law were supposed to be entitled to a real and not merely a nominal hearing in the making of laws. This is not the place to discuss the question whether the fourteenth century idea was or was not in accordance with the dictates of sound common sense.

Advice of Lords and Commons touching the Grand Commissions.

Apart from the matters embodied in the first Statute of 15 Edward III., thus repealed two years afterwards, there is also enrolled on the Roll of Parliament the advice of the " Magnates and others " as to some points contained in the Commissions appointing Magnates to enquire concerning oppressions, extortions, grievances, and excesses committed by the King's officers and others.[2]

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[1] *Rot. Parl.*, 17 Edw. III., No. 23.

[2] *Rot. Parl.*, 15 Edw. III., No. 42.

As elsewhere expressed,[1] it was advised by the "Magnates "and Commons" that (should it be the King's pleasure) the Justices appointed in the Grand Commissions should thenceforth stay proceedings in respect of all matters contained therein except matters touching the King's officers and those who had exported wool or other merchandise not cocketted, and without payment of custom dues, contrary to the King's prohibition. It was advised that all those who had been fined, when absent, in the Courts of the Commissioners, and were unwilling to pay, should be discharged of the fines, and stand at common law before the same Justices or in any other place where they ought reasonably to answer.[2] It was advised that writs should issue, at the suit of any who desired them, to stay, until the next Parliament, Exigents which had issued or were to issue in respect of matters not touching felony or trespass committed against the peace.[3] It was advised that, inasmuch as the Justices had given commandment to cause to come all the free men of the Counties in which their sessions were and had been, and had charged the Sheriffs to answer for the issues of the lands even of those who were not resident and of those who were sick indeed and without deceit, there had been error, and the Justices ought to redress it. It was advised that should Sheriffs, through malice, return in panel the names of persons non-resident or sick, the Justices should make enquiry touching them, and cause such Sheriffs as should be convicted at the suit of party to be reasonably punished.[4]

And, in particular, touching the challenge of jurors or indictors.

The most remarkable part of the advice of Lords and Commons was, however, that whereas persons indicted could not obtain their acquittal except by a jury composed in part of those who had indicted them, it were

[1] *Rot. Parl.*, 15 Edw. III., No. 62.
[2] *Rot. Parl.*, 15 Edw. III., No. 63.
[3] *Rot. Parl.*, 15 Edw. III., No. 65.
[4] *Rot. Parl.*, 15 Edw. III., No. 66.

well, if anyone so indicted would challenge any of his indictors upon the taking of the jury for his deliverance, that the challenge should be allowed until the next Parliament, and that none of such indictors should be upon the juries against the will of those who were so indicted or to be indicted in the meantime, and that certain law should be then ordained as to that which should be done in such case.[1]

Trial by jury, in criminal charges, had, as yet, made but little progress.

This shows clearly (like the report of Willoughby's arraignment) that, in criminal charges, trial by jury had remained in nearly the same condition as that in which it appears soon after the abolition of Ordeal. It shows, however, also, that there was some slight awakening of public opinion to the fact that there could not be strict justice when any man was condemned on any accusation by the verdict of his accusers. The right to challenge jurors, indeed, though it seems to have been recognised as early as Bracton's time,[2] seems to have been recognised only in cases in which life was at stake.[3] It was certainly a healthy sign that there was a desire to extend this right, and to give all accused persons something more nearly approaching the semblance of a fair trial. This wish, nevertheless, had but little practical effect, and it was long before trial by jury assumed its present form.

Numerous cases of importance in the volume.

So much space has been occupied in the attempt to describe the exceptional features of a most remarkable period, and their place in the history of the law and of the constitution, that none remains for lengthy comment on the many important cases of a more ordinary kind which occur in the present volume. It would, however, perhaps, be remissness on the part of an editor to leave them all quite unnoticed.

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[1] *Rot. Parl.*, 15 Edw. III., No. 67.

[2] Bract., 143, b.

[3] Britton, Lib. I., c. 5, § 8.

The Sheriff in fee and the Under-sheriff of Lancaster.

A case[1] which may be worth some attention is the action for Trespass or "Contempt" brought by the Abbot of Furness against Robert de Radeclyf, who was described in the writ as Sheriff of Lancaster. The Abbot alleged that he had the Sheriff's Turn by grant, and that the Sheriff had nevertheless distrained the Abbot's tenants to present matters presentable at the Turn. Apart from the merits, certain questions arose as to the *status* of Radeclyf, who was in fact Under-sheriff to Henry, Earl of Lancaster. There was, on this ground, a plea in abatement of the writ, which was not allowed, because Radeclyf, as acting Sheriff, took the Sheriff's oath in the Exchequer. Radeclyf in the end, prayed aid of the Earl on grounds stated in the reports and in notes from the records appended. It may, however, be of use to show from other sources, and a little more in detail, what was the position of the Sheriff of Lancaster and of his Under-sheriff.

In early Great Rolls of the Exchequer[2] a *Vicecomes* commonly, but not quite regularly, appears as returning an account for the "Honour" of Lancaster. In the sixth year of the reign of Henry III. the return is made as for the County of Lancaster. For the last quarter of the fifty-first year of the same reign Edmund, described as brother of Edward I. (who had come to the throne before the account was completed), renders an account, reciting that King Henry had given him the County by charter dated the 30th of June. For the first twelve years of the reign of Edward I. his brother Edmund still makes a return for the County, *sed tantum de debitis Regis.* From the thirteenth to the nineteenth year of the reign the King's brother disappears, and Gilbert de Clifton renders the account as Sheriff, and from the twentieth to the twenty-sixth year Ralph de Mountjoy, also as Sheriff.

[1] Mich., 14 Edw. III., No. 35.

[2] Great Rolls of the Exchequer, 11 Hen. II., and successive years, Tit. *Lanc.*

In the 27th year of the reign of Edward I. Thomas, Earl of Lancaster, son and heir of Edmund the King's brother, appears as Sheriff, but Richard de Hoghton makes the return for him; and in every subsequent year as far as 13 Edward II. the Earl also appears as Sheriff, but another person (not styled Under-sheriff) makes the return for him. From the year 14 Edward II. (after the death of Thomas, Earl of Lancaster) to the twenty-first of April, 1 Edward III., the Earl of Lancaster disappears from the Rolls, and other persons make the returns as Sheriffs. From the 21st of April, 1 Edward III., to Michaelmas in the same year, Henry, Earl of Lancaster, appears as Sheriff, but Geoffrey de Werberton makes the return for him. In the year 2 Edward III. the same Earl appears as Sheriff, but in that year first occurs the mention of an Under-sheriff as returning on his behalf.

After this time an Under-sheriff commonly returned on behalf of Henry, Earl of Lancaster, described as brother and heir of Thomas, late Earl of Lancaster. Robert de Radeclyf, against whom the action was brought, was Under-sheriff in the twelfth year of the reign, in the thirteenth, and in the fourteenth, during the whole of which time it is stated that the Earl was Sheriff *de feodo*.[1] It seems clear, from the facts above stated, that it had at one time been the practice to describe the acting Sheriff, and not the Sheriff in fee, as Sheriff, even in the Rolls of the Exchequer, but that the practice had not been uniform. This appears to explain the description of Robert de Radeclyf as Sheriff in the writ of Trespass, and to afford an additional reason for holding the writ good.

A remarkable case of Trespass.

The thirty-eighth case in Michaelmas Term also presents many features of interest. It was an action of Trespass (for cutting and carrying away trees) in which the defendant alleged a prescription that those seised of

[1] The Great Rolls of the Exchequer, 13 & 14 Edw. III., Tit. *Lanc.*

his freehold had a profit in a certain wood such that they might (if the first comers) take and carry away the branches, up to the trunk, of any tree blown down or felled, and he asserted that he had done no more. Issue was joined upon his plea.

There is here also a curious illustration of the tone and manners of the Bench. Willoughby, J., cited a particular case with respect to which Sharshulle, J., remarked "that is not law now." Willoughby replied, in words which would hardly be thought courteous in the present day, "One more learned than you are adjudged it."

Brief notices of other cases.

Among other matters which may be considered worthy of notice may be mentioned a case [1] in which Waste was alleged to have consisted in (*inter alia*) "exulando per "graves et intolerabiles districtiones" certain tenants in villenage. With regard to attainder the doctrine was laid down that when a person commits felony, and is attainted, the attainder relates back to the day on which the felony was committed, and that, if the person who committed it comes into possession of land in the interval, the land escheats to the lord.[2] A *Quare impedit*[3] of some importance was brought from Ireland, by writ of Error, into the King's Bench in England. Some questions relating to tenure *in capite, ut de corona* and otherwise here assume prominence. From other points of view there are many other cases which may possibly be thought of not less importance, but it may be hoped that the Index of Matters is sufficiently full to show their nature and the subjects which they illustrate.

I have again the pleasure of offering my best thanks to the Benchers of the Honourable Societies of the Inner Temple and Lincoln's Inn for the loan of their valuable

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[1] Mich., 14 Edw. III., No. 88, p. 211.

[2] Mich., 14 Edw. III., No. 9, p. 32.

[3] Hil., 15 Edw. III., No. 33 (pp. 326–338, and Appendix).

MSS. It would be difficult to exaggerate the advantage which I have derived from the power thus afforded me of preparing, collating, and correcting the text in my own study, and at my own time.

L. Owen Pike.

30th August 1889.

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THE CHANCELLORS, JUSTICES OF THE TWO BENCHES, TREASURERS, BARONS OF THE EXCHEQUER, AND JUSTICES IN EYRE, DURING THE PERIOD OF THE REPORTS.

Chancellors and Keepers of the Great Seal.

Robert de Stratford, Bishop of Chichester.
Sir Robert Bourchier, from 14th December, 14 Edward III. (1340).[1]

[1] *Rot. Lit. Pat.*, 14 Edw. III., p. 3, m. 10 d.

Justices of the Court of King's Bench.

Sir Robert Parning, Chief Justice.
Sir William Scot, Chief Justice, from 8th January, 14 Edward III. (1340–41).
Sir Robert de Scardeburgh.

Justices of the Court of Common Pleas.

Sir John de Stonore, Chief Justice. Sir William de Shareshulle. Sir John Inge. Sir John de Shardelowe. Sir Richard de Aldeburgh. Sir Roger Hillary. Sir William Basset. Sir James de Wodestoke. Sir Richard de Willoughby.	In Michaelmas Term, 14 Edward III.[1]
Sir Roger Hillary, Chief Justice. Sir William Basset. Sir Richard de Aldeburgh. Sir Thomas de Heppescotes.	In Hilary Term, 15 Edward III.[2]

Treasurers.

Roger de Northburg, Bishop of Coventry and Lichfield.
Sir Robert Parning (from 15th December 1340).[3]

Barons of the Exchequer.

Sir Robert de Sadington, Chief Baron.

Sir Thomas de Blaston. Sir William de Broclesby. Sir Gervase de Wilford. Sir William de Stowe.	(From 12th December, 1340.)[4]

[1] In the order in which the names appear in the "Feet of Fines."
[2] Appointed 8th Jan. 14 Edw. III. (1340–1), *Rot. Lit. Pat.*, 14 Edw. III., p. 3, m. 7.
[3] *Rot. Lit. Pat.*, 14 Edw. III., p. 3, m. 7.
[4] *Rot. Lit. Pat.*, 14 Edw. III., p. 3, m. 4.

Justices in Eyre.[1]

Sir Robert Parning (Treasurer).
Sir William Scot (Chief Justice of the King's Bench).
"Magister" John de Hildesle.
Sir Thomas de Heppescotes (Justice of the Common Bench).
Roger de Baukwell.
Richard de la Pole de la Peke.

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[1] Justices in Eyre, *hac vice*, at the Tower of London, appointed 17th Jan. 14 Edw. III. (1340–41), *Rot. Lit. Pat.*, 14 Edw. III., p. 3, m. 4. See also *Placita de Banco*, Hil., 15 Edw. III., R°. 3 d, and the record of the Eyre, 15 Edw. III.

CORRECTIONS.

Page 46, note 1, at the commencement of the parenthesis *insert* the word "not."

„ 260, line 16, *dele* the word "the" first there printed.

„ „ „ 19, „ „ „

„ 306, „ 7, *after* the word "King" *dele* the comma.

„ 344, „ 10, *for* alien *read* aliene.

„ 398, second column, line 1, *for* widdow *read* widow.

In the preceding volume of Year Books (14 Edward III.), Introduction, p. lviii, line 22, *for* Bishop *read* Abbot.

MICHAELMAS TERM

IN THE

FOURTEENTH YEAR OF THE REIGN OF

KING EDWARD THE THIRD

AFTER THE CONQUEST.

U 54050. Wt. 1415. A

MICHAELMAS TERM IN THE FOURTEENTH YEAR OF THE REIGN OF KING EDWARD THE THIRD AFTER THE CONQUEST.

A.D. 1340. Cessavit.

(1.) § A writ of *Cessavit* was brought against a man, and the plaintiff counted that the tenant held of him by fealty and by the services of 15*d.* by the year, &c., and that the tenant had ceased &c.—*Pole.* One W. de T., whose estate you have in the seignory, enfeoffed us, by this deed, of a moiety of this land, before the Statute,[1] to hold by the services of one halfpenny by the year for all services, and enfeoffed us of the residue by another deed, which is here, in the same manner, and so this tenancy, which you suppose to be held by one entire service, is several and held by different services; judgment of your writ.—*Gayneford.* You hold it as one entire tenancy; ready &c.—*Pole.* You shall not have the averment in opposition to the deed of him whose estate you have in the seignory any more than in a case of avowry; and even if this were a case of avowry we should be discharged by this deed which is here as much as by a *Ne injuste vexes,* or by a *Contra formam feoffamenti,* even though you had alleged seisin by our own hand; wherefore &c.

[1] 18 Edw. I., St. 1 (*Quia emptores*).

DE TERMINO MICHAELIS ANNO REGNI REGIS EDWARDI TERTII A CONQUESTU QUARTO DECIMO.[1]

(1.)[2] § Un bref de *Cessavit* fut porte vers un homme,[3] et il counta qil[4] tient de luy par fealte et par les services de xv *d.* par an, &c. et qil avoit cesse, &c.—*Pole.* Un W. de T., qi estat vous avez en la seygnurie, nous enfeffa par ceo fait de la moyte de cest terre devant estatut a tener par les services dun maille[5] par an pur toutz services, et du remenant, par un altre fait qe yci est, en mesme la manere, issint est ceste tenance several et tenu[6] par divers services, quel vous supposez estre tenuz par un enter service; jugement de vostre bref.—*Gayn.* Vous le tenez com un entere tenance;[7] prest, &c.—*Pole.* Vous naverez mye le averement en contre le fait celuy qi estat vous avez en la seignurie nyent plus qen cas davowere; et auxi avant par ceo fait yci nous serroms descharge mesqe ceo fuit en avowere com par un *Ne vexes,* ou par un *Contra formam feoffamenti,* mesque vous liassez seisine par my nostre mayn demene; par quei, &c.—SCHARD. A.D. 1340. Cessavit.

[1] The reports of this Term are from the Temple MS., the Lincoln's Inn MS., the Additional MS. in the British Museum numbered 25184, and the Harleian MS. No. 741.

[2] From L. and 25184, as far as the point at which the larger type ends.

[3] L., femme. There is a report in Harl. 741, which differs somewhat from both of the reports here printed, and in which it is said that the action was against a man and his wife, the latter of whom was admitted to defend upon her husband's default.

[4] L., qele.

[5] 25184, mayl.

[6] L., several tenuz, instead of tenance several et tenu.

[7] L., service.

A.D. 1340. SCHARDELOWE. In a case of *Contra formam feoffamenti*, the writ is given by Statute[1] that no one shall be distrained contrary to the form of his feoffment; but it seems that you shall not oust him from the averment which he offers in maintenance of his writ by the deed of one to whom he is altogether a stranger, to which deed he cannot have any answer.—*W. Thorpe.* Sir, though he cannot have answer expressly to the deed, as by denying or confessing it, nevertheless he can have averment of a matter which is equivalent, as by saying "We never had anything of the gift of this same W."—And to this WILLOUGHBY and SCHARDELOWE agreed, saying that it had been many times adjudged that in opposition to such a deed averment should not be had either upon a writ of that nature or upon an avowry, that is to say, in opposition to the deed of one whose estate the person tendering the averment himself had in the seignory.—But *Pole* passed on *gratis*, and said that the tenant held this land by the services of one penny by the year for all services, in respect of which nothing was in arrear on the day of the purchase of the writ; ready, &c.—*Gayneford.* You held of us by such services as we have counted; ready, &c.—SCHARDELOWE. Upon this writ issue cannot be taken on the quantity of the services, for in respect of that the tenant ought to save himself by protestation, &c.—And afterwards the issue was received on the quantity of the services, as the parties tendered it.—This agrees with a case in Trinity Term in the 8th year, upon a like writ, *per* HERLE.[2]

Cessavit, where the tenant said that he held the

§ *Cessavit* was brought, where the esplees of the rent were alleged and challenged.—The exception was not allowed.—*Thorpe.* By the count and by the writ it is supposed that the tenancy is one; and we tell you that one J. was seised of the entirety

[1] 52 Hen. III. (Marlb.), c. 9.

[2] Y. B., Trin., 8 E. 3, No. 27, pp. 46–47.

En cas de[1] *Contrà formam feoffamenti* cest done[2] par estatut qe homme ne serra mye destreint encountre la forme de son feffement; mes il semble qe par le fait celuy a qi il est tute estrange, a quel fait il ne put nul respons aver, vous ne luy oustres pas del averement quel il tende en mayntenance de son bref. —*W. Thorpe.* Sire, mes qil ne put mye expressement aver respons al fait, com a dedire le ou granter, jalemayns il put aver un averement de chose qe tant vaut, com a dire Nous navoms unqes rien de doun mesmes cesti W.—*Et ad hoc consenserunt* WILUEBY et SCHAR. qe disoient qil fut meynte foith ajugge qencountre tiel fait[3] nen tiel bref nen avowere home navera mye un averement encontre la fait celuy qi estat il mesmes ad en la seignurie.—Mes *Pole* passa de gree, et dit qil tieynt cesty terre par lez services dun dener par an pur toutz services, et en dreit de ceo rien ne fut arere jour de bref purchace; prest &c.[4] —*Gayn.* Vous tenistez de nous par autiels services com nous avoms counte; prest &c.—SCHAR. En cesti bref issue ne put estre pris sour le quantite des services, qar en dreit de ceo le tenant se doit salver par protestacion &c.—Et puis[5] lissue fuit resceu sour le quantite des services come les parties les tiendrent, &c.—*Concordat per* HERLE *Trinitatis viij., tali brevi, &c.* A.D. 1340.

§ *Cessavit*[6] porte ou les esples de la rente lies et chalengez. —*Non allocatur.—Thorpe.* Par conte et bref est suppose la tenance estre une; et vous dioms qun J. fust seisi del entier de ceo qest en demande; et de parcele, saver iiij. acres de Cessavit, ou le tenant dite qil tent la terre par

[1] L., en ceo cas, instead of en cas de.

[2] L., done est, instead of cest done.

[3] fait is not in L.

[4] The words prest &c. are not in L.

[5] L., pusse.

[6] This report of the case is from T. alone.

A.D. 1340. land by divers services as several tenancies; and the plaintiff had the averment that he did not, in opposition to his grantor's deed, because it was at the common law.

of that which is in demand; and of parcel, that is to say, of four acres of land, he enfeoffed B., the tenant's grandfather, to hold of him, before the Statute,[1] by fealty, and the services of one halfpenny; and of the residue he enfeoffed this same B. to hold of him by the services of one halfpenny. (And *Thorpe* shewed deeds testifying the feoffments.) And J. granted the seignory to the father of A., who brings the writ. And we tell you that the plaintiff is seized of the halfpence. Judgment of the writ which supposes the tenancy to be one. —*Gayneford.* We are strangers to the deeds; wherefore we will aver our writ, that is to say, that the tenancy is one.— *Thorpe.* You shall not be admitted to that any more than he whose estate you have would have been; for in an avowry I should oust you, by the deed of him whose estate you have, from avowing for more services than are comprised within his fee; and, for the same reason, I shall oust you from this averment.—SCHARDELOWE. The case is not similar; for in the case which you put he is ousted by Statute[2] from avowing or distraining contrary to the feoffment; but in this case you are at the common law.

Assise of Novel Disseisin.

(2.) § An assise of Novel Disseisin was brought against John, son of Nicholas Trymenel, and a man and his wife, and others, before SIR R. WILLOUGHBY, and ROGER DE BAUKWELL (the presence of Robert de Sadington not being expected) by writ of the Lord the King *quod si non omnes,* upon which writ SIR ROBERT SADINGTON was not present, but the other two were. And thereupon the parties came, and the husband and his wife pleaded to the assise, and all the others pleaded *nul tort,* &c., except Henry, brother of Nicholas Trymenel,[3] who said that the plaintiff ought not to be answered, because he had been outlawed upon a writ of trespass in the Common Bench. Thereupon he had a day over to produce his record.

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[1] 18 Ed. I., St. 1 (*Quia emptores*).

[2] 52 Hen. III. (Marlb.), c. 9.

[3] He and others pleaded the outlawry according to the record, and according to the other reports, including that in Fitzherbert's *Abridgment.*

terre, feffa B., ael le tenant, a tener de lui, avant lestatut, par feaute et les services dun maile; et del remenant il feffa mesme celui B., a tener de lui par un maile; et mostra fetz temoignantz le feffements; le quel granta la seignurie al pere A. que porte le bref. Et vous dioms qil est seisi de les mailes. Jugement du bref qe suppose la tenance estre un.—*Gayn.* A les fetz sumes nous estranges; par quei nous voloms averer nostre bref, saver qe la tenance est un.—*Thorpe.* Vous ne serrez pas resceu pluis avant qe celui qi estat [vous avez]; qar en avowere jeo vous ousteroi, par le fet celui qi estat vous avez, davower par plusours services qe ne sont compris deinz son fet; et, par mesme la resoun, jeo vous ousteroy de ceste averement.—SCHARD. *Non est simile;* qar en le cas qe vous mettes il est ouste par statut davowere ou destreindre contre feffement; mes vous estes en ceo cas a la comune ley.[1] A.D. 1340. divers servis cum several tenances, et le pleintif avoit laverement qe non, encontre le fet sun grantour, quia ad communem legem. [Fitz. *Cessavit*, 28.]

(2.)[2] § Une assise de novele disseisine fuit porte devers Johan le fitz Nicholas Trymenel,[3] et un homme et sa femme, et altres, devant SIRE R. WILUGBY et ROGER DE BAUKWELLE,[4] *non expectata præsentia Roberti de Sadingtone, per breve domini Regis quod si non omnes,* a quele bref[5] SIRE ROBERT[6] SADINGTONE ne fut pas, mes lez altres ij. furent, ou lez partiez vyndrent, et le baroun et sa femme plederent a lassise, et touz lez aultrez plederent nul tort, &c., salve Henre le frere[7] Nicholas Trymenel[8] que[9] dit qe le pleintif ne dut estre respondu qar il fut utlage[10] en un bref *de transgressione* en le comune Bank, sour quei il avoit jour outre daver soun recorde, Assise de novele disseisine. [14 Li. Ass. 14; Fitz. *Assise*, 110.]

[1] *See* No. 21 next below.

[2] From L. and 25184, until otherwise stated, but corrected by the record, *Placita de Banco*, Michaelmas, 14 Edward III., R°. 124. It there appears that the assise was brought by John de Merynton against John, son of Nicholas Trymenel, Knight, and Elizabeth his wife, and others (among whom was Henry, brother of the said Nicholas) in respect of the manor of Morton Daubeney and a carucate of land in Warwickshire.

[3] L., Trymelle; 25184, Trenonel.

[4] L., Roger de Baccoun; 25184, R. de B., instead of Roger de Baukewelle.

[5] bref is not in L.

[6] The words Sire Robert are not in 25184.

[7] L. and 25184, Johan le fitz, instead of Henre le frere.

[8] L., Trymelle; the word is omitted from 25184.

[9] 25184, et.

[10] L., utalage.

A.D. 1340. And, as to the others, the assise was respited for default of jurors. On another day the parol demurred without day through absence of the Justices. Therefore the parties were reattached to appear on another day, on which day SIR R. DE WILLOUGHBY was not present, but SIR R. DE SADINGTON and ROGER DE BAUKWELL were. On that day the husband made default, and the wife[1] was admitted to defend her right, and, as tenant, pleaded to the assise.—And Henry, brother of Nicholas Trymenel produced a release from the plaintiff by which the plaintiff had released to him all manner of actions; and the date and the witnesses to the deed were in another county.—The plaintiff said:—He shall not be admitted to that since he has previously pleaded a record by way of bar of the assise, and now the assise is reattached on the same point, wherefore he shall have no other plea but maintain his first bar.—To that Henry said that at the time at which the record was pleaded, he was under age, and still is, wherefore that plea shall not be prejudicial to him.—Thereupon the parties were adjourned into the Bench.—And they came, and Henry produced the release, as above.—*Pole* demanded judgment as above, since Henry had failed to produce the record which he had alleged, and prayed that he might be held a disseisor, and prayed the assise against him for damages according to the Statute.[2]—*W. Thorpe.* Sir, we think that upon this record you will not award any assise, for you will find by the record that on the first day SIR ROBERT DE SADINGTON was not present, but the other two were, so he could not

[1] According to the record the husband and wife were the above-named, John son of Nicholas Trymenel, and Elizabeth his wife.

[2] 6 Ed. I. (Gloucester), c. 1.

et devers lez aultrez lassise remeynt[1] par defaute de jurours. A un aultre jour la paroule demura sanz jour par[2] absence dez Justices; par quei lez partiez furent reattaches tanqe a un aultre jour, a quel jour[3] SIRE R. DE[4] WILUBY ne fut pas, mes SIRE R. DE[4] S. et R. DE B. y[5] furent. A cel jour le baroun fit defaute, et la femme fut resceu a defendre soun dreit, et, come tenant, pleda a lassise.—Et Henre le frere[6] Nicholas Trymenel[7] myst avant relees[8] le pleintif par lequel il avoit relesse a luy toutz manerez daccions &c., et la date fut en altre Counte et testmoignes en la fait.—Le pleintif[9] dit a ceo navendra il mye del houre que aultrefoith il avoit plede par manere en barre dassise[10] par un recorde, et ore lassise en mesme la poynt reattache, par quei il navera aultre plee mes a mayntener soun primer barre.—A ceo Henre[11] dit qe al temps de cel recorde plede il fut deinz[12] age, et unqore est, par quei ceo plee[13] ne luy serra mye prejudicial.—Sour quei les partiez furent ajornes en Bank, qe vyndrent, et Henre[11] myst avant le relees, *ut supra.*—*Pole* demanda jugement, *ut supra,* del houre qil avoit failli[14] de soun recorde qil avoit allegge, et pria quil fuit atteynt disseisour et[15] devers luy[16] lassise dez damages solon lestatut.—*W. Thorpe.* Sire, nous entendoms qe sour cesti recorde vous ne voillez nul assise agarder, qar vous troverez par le recorde qe al primer jour SIRE ROBERT[17] DE[18] SADINGTONE ne fut pas, mez lez aultres ij, A.D. 1340.

[1] 25184, revynt.
[2] L., de.
[3] The words a quel jour are not in L.
[4] The words Sire R. de are not in 24184.
[5] y is not in L.
[6] L. and 25184, Johan le fitz, instead of Henre le frere.
[7] L., Trymelle, the word is omitted from 25184.
[8] L., lees.
[9] pleintif is not in 25184.
[10] L., daccion.
[11] L. and 25184, Johan.
[12] L., de noun.
[13] L., celle, instead of ceo plee.
[14] L., fally.
[15] et is not in L.
[16] L., luy et.
[17] L., Richard.
[18] The words Sire Robert de are not in 25184.

A.D. 1340. record that which was done in his absence; and afterwards on the last day, which was the first subsequent day of the plea, SIR ROBERT DE SADINGTON was present, and SIR RICHARD DE WILLOUGHBY (who was the Chief) was not; so on that day he could not record anything that was done before; and the third, who was not Chief, could not record anything by himself in the absence of him who was Chief.—And this objection was not allowed, because it was said that inasmuch as the third was Fellow-Justice throughout, and was present on each day, he could record by himself.—*W. Thorpe* took exception to the record on the ground that they had not a second *quod si non omnes* when SIR RICHARD DE WILLOUGHBY was not present.—And this was not allowed, because it was said that one such writ would serve throughout the assise and for all.—*W. Thorpe* took exception to the record on the ground that the record did not come to SIR ROBERT DE SADINGTON by writ.—And this was not allowed for the reason above.—And afterwards, by judgment, *Pole* was put to answer to the deed (which he denied), because it was adjudged that previously and at that time Henry was under age.

Assise of Novel Disseisin.

§ Assise before WILLOUGHBY and BAUKWELL in the country. And by writ of *si non omnes* WILLOUGHBY and BAUKWELL held it the first day, when the husband and his wife and a third person named pleaded that the plaintiff ought not to be answered because he was outlawed. And they were told to have the record at another day. On that day the husband did not come, and the wife was admitted, and pleaded to the assise; and the third produced a release of all actions executed since the last day; and on that day the assise was before WILLOUGHBY and BAUKWELL. And note that the writ of *si*

issint il ne purra mye recorder ceo qe fuit fait en sa absence; et pus a dreyn jour, qe fut primer jour de plee apres, SIRE ROBERT DE[1] SADINGTONE y fuit et[2] SIRE RICHARD DE[3] WILUBY qe fust chiefe ne mye; issint a cel jour il ne purra rien recorder qe fust fait avant, ne lautre qe[4] ne fut chiefe riene ne purra recorder a luy en absence de celuy qe fut chiefe.—*Et non allocatur*, qar dit fut qe quant il fuit touz[5] jours compaignon, et a chesqun journe fut, la purra il recorder a luy.—*W. Thorpe* chalengea le recorde de ceo qils navoint pas, quant Sire R. DE[6] WILUGBY ne fuit pas, un aultre *quod si non omnes.—Et non allocatur*, qar dit fuit qe un tiel bref servireit[7] en tote lassise et pur toutz.—*W. Thorpe* challengea le recorde pur ceo qe le recorde ne vynt pas a SIRE ROBERT[8] DE[9] SADINGTONE par bref.[10]—*Et non allocatur, causa ut supra.*—Et pus par agarde *Pole* fuit mys a respoundre al fait, et le dedit, *quia alias et modo* agarde *infra ætatem*, &c. A.D. 1340.

§ Assise[11] devant WILBY et BAUK. en pais. Et par bref *si non omnes*, WILBY et BAUK. tindrent la primer journe, oue le baroun et sa femme et le terce nome plederent qe le pleintif ne duist estre respondu, qar il fust utlage. Et *dictum est eis quod habeant recordum* a un autre jour. A quel jour le baroun ne vient pas, et la femme fust resceu et pleda al assise; et le terce myst avant [relees] de chescun accion fet puis la darenere jour; et cel journe fust devant WILBY et BAUK. Et nota qe bref *si non omnes* sert Assisa Novæ Disseisinæ.

[1] The words Sire Robert de are not in 25184.
[2] et is not in L.
[3] The words Sire Richard de are not in 25184.
[4] qe is not in 25184.
[5] L., totuz.
[6] The words Sire R. de are not in 25184.
[7] L., serreit.
[8] L., Richard.
[9] The words Sire Robert de are not in 25184.
[10] The words par bref are not in L.
[11] This report of the case is from T. alone.

A.D. 1340. *non omnes* serves once for all, pending the plea. And then they abode judgment, inasmuch as he had first of all pleaded the outlawry in bar, whether he should now be admitted to plead another plea in bar. And it was said that he was under age. Thereupon they were adjourned. And on the day given SADINGTON and BAUKWELL came, and WILLOUGHBY did not come, but he sent the record to them, and the same plea as before was pleaded.—Thereupon they were adjourned into the Bench, where *Thorpe* alleged that the plea was discontinued, because when at first the assise was arraigned before WILLOUGHBY and BAUKWELL and the plea was pleaded before them, as above, and WILLOUGHBY did not come, but SADINGTON and BAUKWELL came, whereas BAUKWELL alone could not record what was before WILLOUGHBY and himself, and it would not be found that WILLOUGHBY who was Chief, with whom the record remained, sent the record to them by legal process, that is to say, by writ, therefore what they did at that day was null.—This objection was not allowed.—*Quære.*—*Thorpe.* Still it seems to us that the party must be put to answer the outlawry, for this is what was at first alleged against him; and you do not find by record that the record of the outlawry was denied, nor that the party answered it; for the words of the record are only "he was told to have "the record," which is a phrase of the Court, and not an issue joined by the party, like a denial of the record.—WILLOUGHBY. It is not so; for the Court would not tell him that he should have his record if it was not previously denied; wherefore it cannot be understood but that the record was denied. Besides, it is a common way of pleading to say, Have your record; by which words it is understood that the party denies the record. And because it appears to the COURT, by inspection, that he who makes use of the deed is still under age, he can plead it; wherefore, Is it your deed?—And note that he was not tenant nor had he taken part in the disseisin.—*Pole.*

a tout pendant le plee. Et adonqes il demurerent en jugement, del houre qil avoit primes plede en barre par loutlagerie, sil[1] serreit resceu ore de pledre autre plee en barre. Et fust dit qil fust deinz age. Sur quei il furent ajourne; a quel jour SAD. et BAUK. vindrent, et WILBY nient, mes il manda le record a eux, et mesme le plee come devant plede.—Sur quei ils furent ajournez en Bank, ou *Thorpe* allegea le plee estre discontinue; qar quant primes lassise fust araine devant WILBY et BAUK., et devant eux le plee plede, *ut supra*, et WILBY ne vient pas, mes SAD. et BAUK., ou BAUK. seul ne poet recorder ceo qe fust fait devant WILBY et lui, et vous ne troverez pas qe WILBY qe fust chief, vers qi le record demura, par proces de ley, saver par bref, manda le record a eux; par quei ceo qil firent a cel journe fust nient.—*Non allocatur.—Quære.—Thorpe.* Uncore nous semble qil covient qe la partie soit mys a respondre al utlagerie, qar ceo fust primes allege contre lui; vous ne troverez pas par record qe le record del utlagerie fust dedit ne qe partie a ceo respondy; qar le record ne voet autre chose mes *dictum est ei quod habeat recordum*, le quele est parole de Court et noun pas myse de partie come dedire le record.—WILBY. Il nest pas icy; qar Court ne dirreit pas a lui qil ust son record sil ne fust avant dedit; par quei il ne poet estre entendu mes qe le record fust dedit. Ovesqe ceo, il est comune manere de pleder a dire Eiez vostre record; par quel parole homme entend qe partie dedit le record. Et pur ceo qe semble a la COURT, par inspeccion, qe celui qe use le fet est uncore deinz age issi le poet il pledre; par quei, est ceo vostre fet?—*Et nota* qil ne fust pas tenant ne coagitour.—*Pole.* A.D. 1340.

[1] T. qil.

A.D. 1340. Not our deed; ready, &c.—And the other side said the contrary.—And it will be tried in this Court, because the date and the witnesses are of a foreign county.[1]

Right. (3.) § John, son of Henry de Gloucester, brought a writ of Right on Disclaimer, whereupon he counted that the lands, &c. were his right and inheritance, for the reason that the tenant against whom the writ was brought held of him by certain services, &c., whereof he was seised in time of peace; and he alleged the esplees as of rent; and he shewed how on a certain day and in a certain year he was summoned to answer the tenant, in a plea of taking of beasts, for the taking of a horse, when he came and avowed upon the tenant &c., because the tenant held of him certain land which is the same land as is demanded; and he rehearsed the whole of the avowry; and so he avowed as in parcel of the tenements holden of him &c., and said that they were parcel of the tenements now demanded; and thereupon the tenant disavowed and absolutely disclaimed holding of him; wherefore he was amerced, and the other recovered damages; and by this disavowal and disclaimer an action accrued to the demandant to demand the tenements in demesne; and that such is his right by the disavowal and disclaimer aforesaid he has suit and good deraignment.—*Pole* demanded view.—*Thorpe.* You ought not to have view, any more than in a *Cessavit*, for the action arises by your disclaimer.—The COURT was of this opinion.—Wherefore *Blaik* denied the right absolutely, and his seisin of which he had counted further as of fee and of right, namely of the fealty and of the rent, &c., and put himself on God and the Grand Assise of our Lord the

[1] According to the record, Henry did not appear on the day appointed, at *Nisi prius*, and interlocutory judgment of *Capiatur assisa* was given in the Common Bench.

Nient nostre fet; prest &c.—*Et alii e contra.*—Et serra ceinz trie pur ceo qe la date et tesmoignes sount de forein courte.[1] A.D. 1340.

(3.)[2] § J. Fitz H. de Gloucestre porta bref de dreit sur desclamer, ou il counta qe ceo fust son dreit [et] heritage, pur la resoun qe le tenant vers qi le bref est porte tient de lui &c. par certeins services &c., dont il fust seisi en temps de pees; et lia les esplees de la rente; et moustra coment certein jour et an il fust somons a respondre al tenant, en plee de prise des avers, de la prise dun cheval,[3] ou il vient et avowa sur lui &c. pur ceo qil tient de lui certeine terre qest mesme la terre qest demande; et rehercea tout lavowerie; et issi avowa come en parcelle des tenementz de lui tenuz &c., et sont parcele des tenementz ore demandez, ou il desavowa et desclama outrement a tenir de lui; par quei il fust amercie, et lautre recoveri damages; par quel desavowement et desclamer accion acrust al demandant a demander les tenementz en demene; et qe tiel soit son dreit par le desavowement et desclamer avant dit il ent ad suyte et dereyne bone.—*Pole* demanda la vewe.—*Thorpe.* Vous ne devez la vewe aver, qar laccion surt de vostre desclamer, nient pluis qun *Cessavit.*—De cel opinion fust la COURT.—Par quei *Blayk* defendi le dreit tout attrenche et sa seisine de quel il ad counte tout outre come de fee et dreit, nomement de la feaute et rente &c., et se mette en Dieu et la grant De Recto.

[1] *See* also No. 23 next below (also from T.), which appears to be another report of the same case. There is also an abridgment in Harl. 741.

[2] From T. alone, until otherwise stated, but corrected by the record *Placita de Banco*, Michaelmas, 14 Edward III., R°. 180. It there appears that the action was brought by John, son of Henry de Gloucester, against Richard Crullyng. It had been removed from the court of Alice, formerly wife of Robert de Aspale, of Huxton (Hoxton), and was in respect of messuages and lands in "Iseldone" (Middlesex).

[3] T., boef.

A.D. 1340. King as to whether he had greater right to hold so many, &c. of land discharged and quit of all manner of services (without this that he held of the demandant the aforesaid tenements) as his right as he held, or the demandant to have the aforesaid tenements by reason of the disavowal and disclaimer aforesaid as his right as he demanded them.—And he tendered half a mark for having mention of the time.—*Thorpe.* Let the mise stand.

Writ of Right on Disclaimer. View demanded and counter-pleaded, because it was the tenant's own disclaimer, and for several other special causes, as appears more fully in this plea.

§ A writ of Right on Disclaimer was brought against Richard Crullyng, and so much land, &c. was demanded.—*R. Thorpe* counted that it was his right, and for the reason that the said R. held of the demandant by fealty and by the services of 20*s.* a year, &c., of which services, &c., and alleged the esplees as in the receipt of fealty and of rent, &c., and suit for deraignment.—*Blaik* defended, &c., and rehearsed the count, and imparled, and came back, and rehearsed the count, and defended, and demanded view.—*R. Thorpe.* You ought not to have view, for this action is given to us by reason of your own disclaimer, and you ought not to be uninformed as to what were the tenements that you disclaimed, &c.; for upon a writ of Intrusion, or upon a writ *De quibus*, by which a tort is supposed in your own person, you shall be ousted from the view; so also here.—*Blaik.* Those are cases in which the writ itself supposes a tort; but this writ does not do so, and this is a writ at common law, in which case the Statute[1] does not oust me from the view; wherefore, &c.—SCHARDELOWE. Upon a writ of *Cessavit*, on your own cesser, you shall not have view, because you ought

[1] 13 Ed. I. (Westm. 2) c. 48.

assise nostre seignur le Roi, le quel il ad meure dreit a tenir tant &c. de terre descharge et quites de touz maneres de services sanz ceo qil tient del demandant les avantditz tenementz come son dreit come il tient, ou le demandant daver les avantditz tenementz par le desavowement et desclamer avant dit come son dreit come il les demande.—*Et dimidia marca*[1] pur le temps.—*Thorpe.* Estoise la myse. A.D. 1340.

§ Un[2] bref de dreit sour le desclamer fut porte vers Richard Crullyng,[3] et fut demande tant de terre, &c.— *R. Thorpe* counta qe ceo fut soun dreit, et par le resoun qe le dit R. tynt de luy par fealte et par les services de xx. *s.* par an,[4] &c., des quex services, &c., et lia les esplez com en recette de fealte et de[5] rente, &c. et suyte[6] de derrerine, &c.—*Blak.* defendi, &c., et rehercea le conte, et emparla, et reveynt, et rehercea le counte, et defendi, et demanda la vewe.—*R. Thorpe.* La vieuwe ne devez aver, qar cest accion nous est done par reson ne vostre declamer demene, et vous ne devez mye estre mesconussant de quex tenementz vous desclamastez, &c.; qar en bref de intrusion nen bref *de quibus,* par quel un[7] tort est suppose en vostre persone, vous serrez ouste; auxi yci. — *Blaik.* La ou[8] le bref mesme suppose un tort; mes issint ne[9] fait pas[10] cesti, et cest un bref a la comune ley, en quel cas lestatut ne moy ouste my; par quei, &c. — SCHARD. En un bref de *Cessavit* de vostre cesser demene vous naverez mye la vewe pur

Bref de Dreit sour le desclamer. Viewe demande et countreplede, pur ceo qe ceo fut de soun disclamer demene, et en plusours altres causes especials, sicome piert plus pleignement en cest plee. [Fitz. *View,* 94.]

[1] The words of the record are, "Et offert domino Regi dimidiam "marcam pro habenda mentione "de tempore, &c."

[2] This report of the case is from L., and 25184.

[3] L., Crolynge; 25184, Croillynge.

[4] The words par an are not in 25184.

[5] de is not in 25184.

[6] 25184, trova seurte.

[7] L., le.

[8] The words La ou are not in L.

[9] L., issue, instead of issint ne.

[10] L., par.

A.D. 1340. to know what tenements you hold, and by what services, and in respect of what services you have ceased. —*Blaik.* Sir, in that case the writ supposes a tort in my person, and this writ does not do so. And, Sir, it might be that I held of him in service, in which case avowry upon me would be given him, and yet I might not thereby be informed as to the tenancy, or it might be that I held of him this land and other land, and I cannot know which land he demands, &c. — STONORE. You ought, in law, to know of whom you hold your land; and in the first case that you speak of disclaimer does not lie; but when you complained yourself in respect of your beasts taken in a certain place, and he avowed in the same place which he said was parcel of these same tenements, when you disclaimed, either unwisely or wisely, you took upon yourself knowledge of what they were; wherefore it appears to me that view is not grantable.—*Blaik* saw the opinion of the COURT, and defended, and prayed leave to imparl, and came back, and rehearsed the count, and then denied, &c., and the right, &c., absolutely, and the seisin, &c., namely, of the fealty and of so much rent, &c., and put himself upon God, &c., whether he had the greater right to hold, &c., discharged and quit, &c., or the other to have them, &c., as his right, &c., as he demanded them. And *Blaik* tendered half a mark for having mention of the time.—*R. Thorpe.* Let the mise stand. And we pray a day of grace.—And the COURT would not grant the day of grace.

ceo qe vous[1] devez conustre quex tenementz vous tenez,[1] et par quex services, et des quex vous avez cesse.—*Blaik.* Sire, la[3] le bref suppose un tort en ma persone, et cesti bref nel fait pas. Et, Sire, put estre qe jeo tienk de luy en[4] service, en quel[5] cas savowere serroyt done sour moy, et par tant ne fu jeo mie[6] asserte de la tenance, ou il put estre qe jeo tienk de luy ceste terre et aultre terre, et[7] jeo ne puisse mye saver quele terre il demande, &c.—STON. Vous devez de ley saver de qui vous tenez vostre terre; et en le primer cas dount vous parlez disclamer ne gist pas; mes quant vous mesmes fuistes[8] pleint de vos averez en certein lieu, et il avowa en mesme le lieu quel il dit estre parcel de mesmes ceux tenementz, quant vous desclamastes, fut ceo folement ou sagement, vous empristez conisance; par quei il semble a moy qe la vewe nest pas grantable.—*Blaik* vist oppinioun de la COURT, et defendi, et pria conge denparler, et revynt, et rehercea le counte, et pus defendi, &c., et le dreit, &c. tot atrenche, et la seisine, &c., nomement de la fealte et de tant de rente, &c., et se met en Dieu,[9] &c., le quel il aye[10] meure[11] dreit a tener, &c., descharge et quite, &c., ou lautre daver lez, &c., com son dreit, &c., si com il les demande. *Et dimidia marca* pur le temps.—*R. Thorpe.* Estoise la myse. Et prioms jour de grace. Et la COURT nel voleit mye granter, &c.[12] A.D. 1340.

[1] In 25184 the word me is inserted after vous.
[2] L., tenuz.
[3] la is not in L.
[4] L., un.
[5] 25184, qeu.
[6] mie is not in L.
[7] The words terre, et are not in L.
[8] 25184, feictes.
[9] 25184, Dieux.
[10] 25184, ad.
[11] 25184, moere.
[12] There is also a very short abridgment of this case in Harl. 741.

A.D. 1340. Waste.

(4.) § A man and his wife and a third person brought a writ of Waste against William de Biltham, and the writ purported that he held by their lease, &c.—*Rokell.* Sire, you see clearly that the writ supposes the lease to have been made by the husband and his wife, which cannot have been unless it was by fine, and he does not show that the lease was so made; judgment of the writ.—WILLOUGHBY. For anything that you have yet said, it may be that the lease was made by fine, so their writ is good on that intendment; and you have not disproved it; wherefore answer.—*Rokell.* This writ cannot he maintained except by reason of a lease made by fine, and no one can have such a fine as that in this Court; judgment of the writ.—*Pole.* Besides, this is by the King's charter, and the tenements are held of him *in capite.*—WILLOUGHBY. Answer to their writ.—*Pole* produced the deed indented of the husband and the wife and the third person, purporting that those three persons leased to him for term of his life, saving the reversion to them and to the heirs of one of them, and demanded judgment of this writ which supposed the inheritance to be to the three.—*Gayneford.* To that we say that, before the lease, we three were seised in our demesne as of fee and of right, and so the reversion, whatever may be the words of the deed, is to us three by reason of the lease; wherefore, &c.—*Pole.* You shall not be admitted to say that in opposition to your own deed which proves the reverse.—SCHARSHULLE. When, having originally a fee, they

(4.)[1] § Un homme et sa femme et le tercie porterent un bref de Wast vers William de Biltham, et le bref voleit qil tient de lour[2] lees &c.—*Rokel.* Sire, vous veiez bien coment le bref suppose le lees estre fait par la baroun et sa femme, quele chose ne put estre sil ne fut par fyn, et il ne moustre mye le lees tiel; jugement du bref.—WILUBI. Pur rien qe vous avez unqore dit, put estre qe le lees se fist par fyn, issint son bref a cel entente bon; et vous ne lavez my desprove; par quei responez.—*Rokel.* Cest bref ne put estre mayntenu sil ne soit par resoun de lees fait par fyn, et home navera mye tiel fyn ceynz; jugement de bref.—[*Pole.* Donqe est ceo par la chartre le Roi, et les tenementz qe sont tenuz de lui en chief.—WILBY. Responez a son bref.][3]—*Pole* myst avant le fait le baroun et sa femme et del tercie endente, qe voleit quex iij. luy lesserent a terme de sa vie, salvant la reversion a eux et a lez heirez un deux, et demanda jugement de cesty bref qe supposa lenheritement a lez iij.—*Gayn.* A cella dioms nous qe, devant le leez, nous iij. fumes seisiy en nostre demene com de fee et de dreit, issint est la reversion, coment qe le fait parle, a nous iij. par resoun de lees;[4] par quei, &c.—*Pole.* Vous navendrez mye a dire cella encontre vostre fait demene qe prove le revers.—SCHAR. Quant ils lesserent a terme de vie, et primes avoient fee, de

A.D. 1340. Wast. [Fitz. *Briefe*, 282; *Dum fuit infra ætatem*, 6.][5]

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[1] From L. and 25184, as far as the point at which the larger type ends, but corrected by the record *Placita de Banco*, Michaelmas, 14 Edward III., R°. 50. It there appears that the action was brought by William de Burgh (de Burgo), and John de Burgh (de Burgo) and Joan his wife, against William de Biltham, in respect of waste in a messuage and lands in Framingham Earl (Norfolk).

[2] L., du instead of de lour.

[3] The words between brackets are not in L.

[4] 25184, relees.

[5] It will be observed that the report printed in Fitzherbert's Abridgment differs from this, from the report printed next below as in T., and from the report No. 20 next below also as in T.

A.D. 1340. leased for term of life, of common right the reversion rested with them as before, for the words in the deed which give the reversion to one are void, wherefore the deed does not deprive them of the averment.—And to this WILLOUGHBY agreed.—SCHARSHULLE and STONORE said:—If the lease had been by fine levied, you would not have had the averment in opposition to it; no more, it seems, shall you have it in opposition to your own deed.—*R. Thorpe, ad idem.* It seems that the inheritance shall be adjudged to him to whom the deed limits it, for when any one puts his seal to a deed in which others are named, and assents to the acts and words of the others in the deed, the deed is good against him as well as against the others, for if a rent had, at the time of the lease, been reserved to one alone, none of the others would have had an avowry for that rent, but only he to whom the deed limited the rent; so it appears with respect to the reversion.—*Gayneford.* That is not similar to this matter, for that is something newly accrued by covenant limited on the lease, but a reversion by common right rests with the lessors. —*Pole.* It seems now that he has abated his own writ, for the husband and his wife cannot lawfully lease except by fine; and now he has himself admitted that the lease was made *in pais;* wherefore we demand judgment of his writ.—WILLOUGHBY. You have passed beyond that, and your plea, if any there be, is to their action; and suppose the three who leased had entered as upon their reversion, I think that, notwithstanding the deed, they would be adjudged to be in their original position, just as, if tenant in tail or tenant by the curtesy of England had leased in that way, and on the lease a reversion of the fee simple had been reserved to them, their entry would place them in their original position.—*W. Thorpe.* But, Sir, it seems to us that a

comune dreit la reversion lour demurt come devant, A.D. 1340.
qar les paroules en le fait qe dounent reversion a un sount voidez, par quei le fait ne luy toude mye laverrement.—*Et ad hoc consensit* WILBY.—SCHAR. et STON.[1] Si le lees ust este par fyn leve, vous nussez mye eu laverrement al encontre; nient plus, semble il, encontre vostre fait demene.—*R. Thorpe, ad idem.* Il semble qe lenheritement serra ajugge a celuy a qi le fait la taille, qar quant home mette son seal a un fait en quel aultrez sount nomez, et se assent a ceo qe lez autres fount et parlent en le fait, le fait devers luy est auxi avant boun cum devers les aultres, qar, si un rente, al temps du lees, ust este reserve a un soulement, nul de lez aultres pur cele rente nust eu avowerie mes celuy a qi le fait la taille; auxi semble il de la reversion.—*Gayn.* Il est nyent semlable[2] a cest matere, qar cella est une chose de novel acru par covenant taille sur le lees, mes la reversion de comune dreit demoert a lez lessours.—*Pole.* Il semble ore qe il ad abatu son bref demene, qar le baroun et sa femme ne pount lesser en ley sil ne soit par fyn; et ore il ad mesme conu le lees estre fait en pays; par quei nous demandoms jugement de son bref.—WILUBY. Vous estez passe cella, et vostre plee, si nul y soit,[3] est a saccion; et posoms qe lez iij. qe lesserent furent entrez com en lour reversion, jeo crey qe, *non obstante* le fait, home lez ajuggera cum[4] en lour primer cours, com si tenant en la taille ou tenant[5] par la ley Denglitere ussent lessez par[6] le manere, et sur le lees une reversion de fee simple lour ust este reserve, lour entrer lez mettra en lour primer cours.—*W. Thorpe.* Sire, mes il semble a nous qe de

[1] The names of the Justices occur in different order in L., and it is not clear who were the dissentients.

[2] 25184, *Non est simile,* instead of Il est nyent semlable.

[3] L., issoit, instead of y soit.

[4] cum is not in 25184.

[5] tenant is not in 25184.

[6] L., en.

A.D. 1340. wife cannot have an action upon a lease made by husband and wife by deed *in pais*, because she is put to her *Cui in vita*.—WILLOUGHBY. If the husband aliene the right of his wife who is under age, and the wife be named in the deed, and make livery with him, when the wife is of full age they shall have their recovery by writ of Entry *dum fuit infra ætatem*, and we have seen such a writ in this Court.—*W. Thorpe* and *Pole* denied this.—Therefore *quære*.—SCHARDELOWE. But if the husband, being under age, and the wife, being of age, aliene the right of the wife, in such case the husband and the wife shall have an action.—*W. Thorpe*. Certainly not, Sir, for the wife shall never have an action with her husband where action is saved to her by *Cui in vita* after his death.—ALDEBURGH. Suppose the husband and wife aliene in fee tail or for term of life to hold of them, rendering to them a certain rent by the year, and after the death of the husband the wife agrees to the rent, she shall have a good avowry, and if she agrees to the rent she shall be barred as to the land.—*William Thorpe* and *Pole* said that she would not.—Therefore *quære*, &c.—*Pole*, as above. We do not understand that in opposition to the deed you shall have the averment.—WILLOUGHBY. It seems that they shall, for the deed does not prove the reversion, because, if the three were in the inheritance and leased, it is clear that the reversion is to those three.—SCHARSHULLE. With regard to that, be it as it may, but it seems that the other cannot say that, for before the lease he had no reversion, but the reversion commenced by the deed; then it seems, inasmuch as the reversion commenced by deed, that he shall not say the reverse.—WILLOUGHBY. That does not prove the point, for even had the reversion

lees fait par le baroun et sa femme par fait en pays A.D. 1340.
la feme ne puit mye aver accion, qar ele est mys a son *Cui in vita*.—WILUGBY. Si le baroun aliene le le dreit sa femme qe est deinz age, et la femme soit nome en le fait, et face lyvere ovesqe luy, a pleyn age la femme ils averont lour recoverir par bref dentre[1] *dum fuit infra ætatem*, et tel bref avoms veu ceinz.—*W. Thorpe* et *Pole* denyerent ceo.—*Ideo*[2] *quære*.—SCHAR. Mes [si] le baroun deinz age et la feme dage alienent le dreit la feme, en tiel cas [le baroun et la feme averount accion.—*W. Thorpe*. Certes, Sire, nanyl, qar la feme navera jammes accion ovesqe son baroun la ou accion la est sauve par le][3] *Cui in vita* apres sa mort.—ALD. Jeo pose qe le baroun et la femme alienent en fee taille ou a terme de vie a tener deux, rendaunt a eux[4] certeine rente par an, et apres la mort le baroun la femme sagree de la rente, ele avera[5] boun avowerie, et si ele sagrea de la rente ele serra[6] barre de la terre.—*William Thorpe* et *Pole* disoient qe noun.—*Ideo*[7] *quære* &c.—*Pole, ut supra*. Encontre le fait nous nentendoms mye qe vous averez laverrement.—WILUBY. Il semble qe si, qar le fait ne prove mye la reversion, qar, si[8] lez iij. furent enheritez et lesserent, cler[9] chose est qe la reversion est a eux iij.—SCHAR. Soit de ceo cum estre put, mes il semble qe lautre ne put mie dire cella, qar devant le lees il navoit mye reversion, einz il comencea par le fait; donqes semble il, quant il comence par le fait, il ne dirra mye le revers.—WILUBY. Cella ne prove[10] mye, qar mesqe la reversion ust este

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[1] dentre is not in 25184.

[2] *Ideo* is not in 25184.

[3] For the words between brackets there are substituted in L., the words la femme avera.

[4] The words a eux are not in 25184.

[5] 25184, navera ele ?, instead of ele avera.

[6] 25184, est.

[7] *Ideo* is not in 25184.

[8] L., qe, instead of qar si.

[9] L., chere.

[10] 25184, put.

A.D. 1340. been reserved by the deed as of fee tail or for term of life, still it would always have been adjudged as of fee simple; wherefore it seems to me as above.[1]

§ Waste, for a man and his wife and a third person, to their disinheritance. And note the opinion of the COURT that husband and wife shall have an action of Waste on their own lease.—*Thorpe.* Judgment of the writ; for we tell you that, whereas the writ supposes the waste to be to their disinheritance in common, the three leased by this deed, &c., saving the reversion to them and the heirs of the third, so that the disinheritance should be supposed to be of him alone.—*Gayneford.* We tell you that, at the time of the lease, these three had the inheritance to them and their heirs, so the land is to revert to them as they were seised. —You cannot say that; for your deed supposes the contrary.—*Gayneford.* The reversion is saved by common right in such a lease; and the deed only serves to give an estate to the tenant for term of life. — *Thorpe.* If one of the lessors had limited the estate by way of remainder over to the others, his interest in his portion would have vested by that remainder, or one of those who had fee might have released to his fellow, and thereby an estate in two parts would accrue to the latter; and so likewise it seems that their portion ought to vest by this deed, since by their deed they limited an estate to the heirs of one of them.—SCHARDELOWE. Then is it the case that all three had a fee simple at the time of the lease?—SCHARSHULLE. He has nothing to do with the estate which they had before the lease, for the reversion was saved by the lease, and it commenced then; wherefore it seems that he cannot, in opposition to their deed, be admitted to say that the reversion is in any one other than the deed purports.—WILLOUGHBY. The right is not challenged by the deed; for the reversion cannot be saved or limited in any course other than that in which the right was before the lease; wherefore it is not proved by the deed how the reversion belongs to them; wherefore, neither the deed nor the lease ousts him from the averment.

Quid juris clamat.

(5.) § Giles de Arderne sued a *Quid juris clamat* against a man and his wife, who came and pleaded with him to judgment, and afterwards made default;

[1] According to the record there were several adjournments, but no decision appears.

reserve par[1] le fait de fee taille ou terme de vie, unqore ele ust este a touz jours[2] ajugge de fee simple; par quei il semble a moy *ut supra.* A.D. 1340.

[r] § Wast,[3] pur un homme et sa femme et le terce, a lour disheritance.—*Et nota opinionem* Curiæ qe le baroun et la femme averont accion de Wast de lour lees demene.—*Thorpe.* Jugement du bref; qar nous vous dioms qe ou le bref suppose le wast estre a lour disheritance en comune qe les trois lesserent par ceo fet, &c., salvant la reversion a eux et les heirs le terce, issi soulement serreit suppose la disheritance a lui.—*Gayn.* Nous vous dioms qa temps de lees eux trois furent enherites a eux et lour heirs, issi est la terre a reverter come il furent seisiz.—*Thorpe.* Ceo ne poes dire, qar vostre fet suppose le contrarie.—*Gayn.* La reversion est sauve de comune dreit en tiel lees; et le fet ne sert fors a doner estat a le tenant a terme de vie.—*Thorpe.* Si un de lessours ust taille par remeindre lestat outre as autres, ceo qe afferreit a sa porcion ust vestu par cel remeyndre, ou lun de ses qavoint fee poait aver relesse a son conpaignoun, et par tant estat acrestereit a lui de deux parties; et mesme la chose semble qe par ceo fet deit vester, saver lour porcion, qaunt par lour fet il taillerent estat as heirs un deux.—Sch. Donqes est il issi qe touz trois avoient fee simple a temps du lees?—Sch. A lestat qil avoint avant le lees nad il quei faire, qar la reversion par le lees fust sauve, et donqes comencea ele; par quei contre lour fait a dire qe la reversion est a autre qe le fet ne purport il semble qil ne poet avenir.—Wilby. Par le fet le dreit nest pas chalenge; qar la reversion ne poet estre sauve par autre cours ne taille qe le dreit fust devant le les; par quei par le fet nest pas prove coment la reversion est a eux; par quei le fet ne le lees ouste pas del averement.[4]

(5.)[5] § Giles de Arderne suyt un *Quid juris clamat* devers un homme et sa femme, qe vyndrent et plederent ovesqe luy en jugement, et pus firent defaute; par Quid juris clamat.

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[1] par is not in L.

[2] The words a touz jours are not in 25184.

[3] This report of the case is from T. alone.

[4] No. 20 next below, which also occurs in the Temple MS. (as the 20th case there) is almost certainly another report of the same case, and there is an abridgment in Harl. 741.

[5] From L. and 25184, as far as the point at which the larger type ends.

A.D. 1340. wherefore they were distrained to hear their judgment. — And now, at this day, they were called.— Giles appeared by attorney; the husband had Protection; and the wife appeared. — *Pole.* Inasmuch as they have pleaded to judgment, and since made default, by reason of which default they are distrained to hear their judgment, there is no plea here, and Protection saves a person only when a plea is pending, and inasmuch as the husband does not now come, which non-coming shall be adjudged a default, we pray that they be distrained to attorn.—*Blaik.* There is still a plea pending here, for if we would answer for the husband and for the wife we could save the default, or we could plead your release subsequently made; and as the wife has appeared, and the husband could not come (for the King records that he is in the King's service), it is reasonable that proceedings be stayed.—*Stouford* denied what he said as to the release.—*Quære.*— SCHARDELOWE. We have no regard to the appearance of the wife, for that is immaterial if the Protection lies, and if we disallow the Protection, and adjudge the attornment, she will not be able to attorn without her husband; and, as to your statement that there is no plea pending, that is not so; wherefore, &c.—And afterwards the parol was put without day, &c.

Quid juris clamat.

§ *Quid juris clamat.*—After plea the tenant made default; wherefore he was distrained to attorn. At another day a Protection was put forward for him and was allowed.

quei il furent destreint doier lour jugement.—Et ore a ceo jour ils furent demandez.—Giles fut par atourne; le baroun fut par proteccion; et la femme apparust.—*Pole.* Pur ceo qils ount plede en jugement et puis firent defaute, par cause de quel defaute[1] ils sunt destreint doier lour jugement, issi il nyad[2] my ple ici,[3] et la proteccion salve homme mes[4] la ou plee est pendant, et ore le baroun ne vient[5] mye, quele nounvenue serra ajugge[6] une defaute, nous prioms qils soient destreint dattourner.—*Blaik.* Il y ad yci plee pendant unqore, qar si nous voussissoms respoundre pur le baroun et pur la feme[7] nous purroms salver la defaute, ou pleder vostre releez fait a nous de pusne temps; et quant la femme apparust, et le baroun ne put mye venir, qar le Roi le recorde en son service, il est resoun qe homme soursisse.—*Stouff* luy denya en dreit del relees.—*Quære.*—SCHARD. A lapparaunce la femme nous navoms nul regard, qar ceo ne toude ne done[8] si la proteccion igise, et, si nous desallowoms[9] la proteccion et agardoms lattournement, ele[10] ne purra my attourner sanz soun baroun; et, en dreit de ceo qe vous ditez[11] qe ceo nest pas plee, il nest mye issint; par quei, &c.—Et pus la paroule fut mys sanz jour, &c. A.D. 1340.

§ *Quid*[12] *juris clamat.*—Apres plee le tenant fist defaute, par quei il est destreint dattourner. A un autre jour apres proteccion est mys avant pur lui et est alowe, Quid juris clamat. [Fitz. *Proteccion*, 64.]

[1] The words par cause de quel defaute are not in 25184.

[2] L., nad.

[3] L., ci.

[4] 25184, mesme.

[5] L., vynt.

[6] L., agarde.

[7] The words et pur la feme are not in 25184.

[8] 25184, ne toude pas ne doune, instead of ne toude ne done.

[9] 25184, desallowames.

[10] L., il.

[11] L., deditez.

[12] This report of the case is from T., and Harl. 741.

A.D. 1340. (6.) § Note.—Detinue of chattels.—The plaintiff recovered damages and not the principal, because all things may be resolved into damages, as an equivalent.

Execution of a Statute Merchant stayed until the plaintiff should come into Court to answer as to a deed conditional.

(7.) § The executors of Thomas Russel by attorney sued a writ, upon a Statute Merchant, to take the body of one R., who executed the statute, the writ being returnable in the Common Bench. — The Sheriff returned that R. was dead.—Thereupon a stranger [1] came and produced a writ from the Chancery setting forth that there was a deed conditional in defeasance of the statute, and that the King commanded the Justices, that having called before them those who they should consider ought to be called, they should further, &c. — Therefore the COURT stayed execution, and a writ issued to cause the executors to come to answer to the deed.

Statute Merchant.

§ Note that one sued execution on a Statute Merchant.—The Sheriff returned that the obligor was dead. Afterwards, he who executed the recognisance came, and said that the recognisance was made on a certain condition, and prayed a writ to warn the other to show cause why he sued contrary to his deed, and had it. And, because he brought a writ from the Chancery to the Justices, he had a *Supersedeas* to the Sheriff to stay execution, for execution had been previously awarded by the Court.—And note that he found mainprise to answer for the debt.

Execution.

(8.) § Note that in *Scire facias* upon a recognisance, where two persons sued, the moneys were delivered to one and to the attorney of the other.

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[1] The person thus described was Thomas Belechere, of Bristol, who appeared as ter-tenant, as is shown by the record.

(6.)[1] § Nota.—Detenu de chateux.—Le pleintif recoveri damages et noun pas le principal, pur ce qe tout court en damage al *contra.* A.D. 1340.

(7.)[2] § Les executours Thomas Russel par attourne suyrent bref, hors dun Statut Marchaunt, a prendre le corps un R.,[3] qe fist lestatut, retournable en Bank.— Le Vicounte retourna qil fuit mort.—Sour ceo vint un estrange et mist avant bref de la Chauncellerie compernant un feit condicionel en defesance del estatut et qe le Roi maunda as Justices *quod, vocatis coram eis quos fore viderint convocandos, ulterius,* &c., et par quei la COURT cessa del execucion, et bref issit de feir vener les executours de respoundre al feit. Execucion cesse del Estatut M[archaunt] taunqe le pleintif ve[igne] en Court de respoundre a un f[eit conditionel.]

§ Nota[4] qun suyst execucion dun estatut marchant. Le Vicounte retourna qil est mort. Et survyent celui qe fist la reconisance, et dit qe la reconisance fust fait sur certein condicion, et pria bref de lui garnyr par quei il[5] suyst contre son fet, *et habuit.* Et pur ceo qil porta bref de la Chauncellerie as Justices, et avoit un *Supersedeas* a Vicounte de surser qil ne fit execucion, qar execucion par Court fust agarde devant.—*Et nota* qil trova meinprise de respondre de la dette. Marchant.

(8.)[6] § Nota qen un *Scire facias* hors dun reconisance pur[7] deux qe suerent, les deners furent liveres a lun et lattourne lautre. Execucion. [Fitz. *Execucion*, 76.]

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[1] From T., and Harl. 741.

[2] From Harl. 741 alone, as far as the point at which the larger type ends, but corrected by the record *Placita de Banco,* Michaelmas, 14 Edward III., R°. 39. It there appears that the *Sci. fa.* was brought by Richard Atte Oke and Matilda his wife (who, with others, were executors of Thomas Russel) against Robert Belechere of Bristol.

[3] Harl., L.

[4] This report of the case is from T., and Harl. 741.

[5] Harl., qil, instead of par quei il.

[6] From T., and Harl. 741.

[7] T. vers.

A.D. 1340. Escheat.

(9.) § Sir Hugh de Hastynges brought a writ of Escheat against Robert de Lascy, and counted that the tenements were his right and his escheat, because one Roger de Wygenhale, who held of him, committed felony, for which Roger was outlawed, &c. And he showed the record of the outlawry *sub pede sigilli*, and a writ, &c.—*Gayneford.* This Roger de Wygenhale did not hold of you on the day of the commission of the felony; ready, &c. — *W. Thorpe.* That is no answer if you do not say, nor at any time afterwards—*Gayneford.* Your own writ gives me the averment, and from the day of the commission of the felony until the day of the attainder all are accounted as one day in law; wherefore, &c.—SCHARDELOWE. If Roger de Wygenhale committed felony, and was attainted for it, and between the commission of the felony and the attainder thereupon he came into possession of this land and held it of the demandant, understand well that the demandant has reason for having the escheat; wherefore, &c.—*Gayneford.* He did not hold of the demandant on the day of the commission of the felony nor at any time since.—*W. Thorpe.* Ready, &c., that he did.—*Gayneford.* You shall not have any averment but that he held of the demandant on the day of the commission of the felony. —WILLOUGHBY. He shall have it for you yourself by your plea give him the averment.—Therefore the issue was entered as *W. Thorpe* tendered it.

And so note that when one person holds of another, and commits felony, and is attainted, the lord has a cause for entering upon the whole of the land which the person attainted held on the day of the commission of the felony and at any time since, for the day of the commission of the felony and the day of the attainder are one and the same day in the law, as appears in this plea.

Escheat.

§ Note that upon a writ of Escheat this issue was received:—he did not hold of the demandant on the day of the felony nor at any time since.

(9.)[1] § Sire Hugh de Hastynges porta un bref deschete devers Robert de Lascy,[2] et counta qe ceo fust son dreit et sa eschete, pur ceo qe un Roger de Wygenhale,[3] qe tient de luy, fist felonie, pur la quele il fust utlage, &c. Et moustra le recorde *sub pede sigilli*, et bref, &c.—*Gayn.* Celuy Roger de Wygenhale[3] ne tient pas de vous jour de la felonie faite; prest, &c.—*W. Thorpe.* Cest nul respons si vous ne diez[4] ne unqes pus.—*Gayn.* Vostre bref demene me doune laverement, et de la[5] jour de la felonie faite jesqe al jour datteyndre[6] sount acountes come[7] un jour en ley; par quei, &c. — SCHARD. Si Roger de Wygenhale[3] fist felonie, et pur ceo fust atteynt, et entre la felonie fait et latteyndre sur ceo avynt a ceste terre et la tynt de luy, entendez[8] bien qil ad reson daver la eschete; par quei, &c.—*Gayn.* Il ne tient par de luy jour de la felonie fait, ne unqes pus. — *W. Thorpe.* Prest, &c. qe cy. — *Gayn.* Vous naverez nul averement mes qe il tient de luy jour de la felonie fait. — WYLUBY. Si avera, qar vous mesmes par vostre plee ly donez laverement. — Par quei lissue fuit entre com *W. Thorpe* luy tendi, &c.

A.D. 1340. Eschete. Et sic nota qe quant un homme tient dun altre, et fait felonye, et seit atteynt, le seignur ad cause dentrer en tut la terre quel il avoit jour de la felonie fait et unqes puis, qar le jour de la felonie fait et le jour datteindre sount un mesme jour par la ley, ut patet in isto placito, &c.[9]

§ *Nota*[10] qen eschete lissu est resceu, il ne tient pas de lui jour de la felonie ne unqes puis. Eschete. [Fitz. *Issue*, 23.]

[1] From L. and 25184, as far as the point at which the larger type ends, but corrected by the record *Placita de Banco*, Michaelmas, 14 Edward III., R°. 24, d. It there appears that the action was brought by Hugh de Hastynges and Margery his wife, against Robert de Lascy, of Gaytford, and Alice his wife, in respect of a messuage and lands in Kirk Bramwyth and Norton-nigh-Cansale (Yorkshire).

[2] L., and 25184, J. de C., instead of Robert de Lascy.

[3] L., and 25184, W., instead of Roger de Wygenhale.

[4] L., dieiez.

[5] 25184, le, instead of de la.

[6] 25184, et del atteyndre, instead of jesqe al jour datteyndre.

[7] come is not in 25184.

[8] L., entendoms.

[9] The marginal abstract is from L.

[10] This abridgment of the case is from T. and Harl. 741, and there is also another abridgment in Harl. 741, in which the demandant's name appears as Hugh de Hascugh.

A.D. 1340. Fine. (10.) § Note that land was rendered by fine to one in tail, remainder to another in fee simple, rendering to the donor a certain rent, and as to the rent the fine was refused.

Mort d'Ancestor. (11.) § An assise of Mort d'Ancestor for three parceners in the County of Oxford, where they recovered. And, because the tenants had nothing in the same county whereof to levy the damages, the demandants caused the record to come into the King's Bench. And before the damages were levied two of the co-parceners died, wherefore the third sued alone to have the damages. And thereupon the defendants came by garnishment, and said that the damages were accessory only to the tenements recovered, and, since the plaintiff had only a third of the tenements recovered, they demanded judgment whether she ought to have execution in respect of more than a third part of the damages.—*Pole.* Perhaps our co-parceners have died without heirs of their bodies, and their estate in the tenements recovered has descended, and in that case there is no one nearer than us to have the damages.—PARNING (JUSTICE). In that case you have their estate by descent and not by recovery; therefore sue execution for the third part of the damages.—And according to some this writ ought to have abated, and she ought to have sued a writ jointly with the executors of the others who were dead, by which writ all the tenants should have been warned.

(10.)[1] § Nota qe terre fust rendu par fyne en taille, remeyndre a un autre en fee simple, rendant a donour[2] certein rente, et en dreit de la rente la fine est refuse.[3] A.D. 1340. Finis. [Fitz. *Fynes*, 57.]

(11.)[4] § Un assise de Mortdancestre pur iij. parceners[5] en le Counte de Oxenford, ou il recoveri. Et, pur ceo qe les tenantz navoint rien en mesme le Counte dount lever les damages, les demandantz firent venir le record devant le Roi. Et devant les damages levez deux parceners morerent, par quei le tierce suy soul pur avoir les damages, ou les defendantz vindrent par garnisement et disoint qe les damages ne sount forsqe accessorie de tenementz recoverez, et del houre qe le pleintif de tenementz recoveriz navereit qe la tierce, il demanderent jugement si de pluis qe de la tierc partie de damages devoit aver execucion.—*Pole.* Par cas nos parceners sount mortes sanz heires de lour corps, et lour estat des tenementz recoverez sount descendy, adonqes ny ad il nul pluis prochein ne nous daver les damages.—PARN. JUSTICE. Donqes avez lour estat par descente et ne mye par recoverer; par quei suez execucion de la tierce partie des damages.—Et *secundum quosdam* cesti bref dust aver abatu, et il dust avoire suy bref od les executours les autres queux furent mortz, le quel bref fuit qe toux furent garniz. Mortdancestre.

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[1] From T. and Harl. 741.

[2] T., lui.

[3] Harl., reverse. The words fin reverse also appear in the margin of the same MS.

[4] From Harl. 741 alone, as far as the point at which the larger type ends. This report of the case there appears as of Hilary Term, 14 Edward III. The commencement of a similar case appears in Y. B., Hil. 14 E. 3, No. 32, where an adjournment is mentioned. That, however, was an assise of Novel Disseisin. Parning, who is described as a Justice in this report was not a Justice in the previous Hilary Term.

[5] Harl., persones.

A.D. 1340. Execution. § Note that three parceners recovered damages by assise of Mort d'Ancestor; the third, after the death of the other two, sued execution for the whole of the damages in the Kings' Bench, and recovered the third part; and as to the other two parts she took nothing. And PARNING said it was because the damages are dependent on the freehold which is severable; but on a recognisance or for a debt recovered the execution would be otherwise.

Verdict in Quare impedit. (12.) § The King brought his *Quare impedit* in the King's Bench against Richard Bishop of Durham, for that it belonged to him to present to the prebend of West Merington. And he counted that one L., predecesssor of this Bishop, was seised thereof, as in right of his Bishopric, and made collation to one T., and installed T., and this T. was elected Dean, and another prebend was annexed to the Deanery, and thereby the prebend of W. became vacant and remained vacant until the temporalities came into hand of the King through the death of the said L., and so it belongs, &c.—The jurisdiction was challenged for that cognisance of the vacancy does not lie within the cognisance of this Court.—This objection was not allowed.—Afterwards the defendant said that there was not another prebend annexed to the Deanery, and so the prebend did not become vacant as alleged.—And the other side said the contrary.—It was found by inquest taken at *Nisi prius* that there was another prebend annexed to the Deanery, and that T. was elected Dean, but that he took the profits of the prebend of W. during the whole time that the temporalities, &c.—*Blaik.* It is found that the prebend was full during the whole time, &c. Besides, with regard to the principal point of the issue, that is to say, Vacant or Not Vacant, no enquiry has been made.—*Thorpe.* There is vacancy in law and vacancy in fact, but vacancy in law does not give an action without vacancy in fact, and that is not found.—PARNING. When he was elected Dean, inasmuch as there was another prebend annexed to the Deanery, the

§ Nota[1] qe iij. parceners recoverirent damages par assise de Mortdancestre; la terce, apres la mort les ij., suyst execucion des damages entiers en Bank le Roi, et recoveri la terce partie; et qaunt a ij. parties el prist rien: par PARN pur ceo qe les damages son dependantz del frank tenement qest severable; mes de reconisance ou de dette recovere[2] lexecucion serreit autre. A.D. 1340. Execucion. [Fitz. *Execucion*, 75.]

(12.)[3] § Le Roi porta soun *Quare impedit* en Bank le Roi vers Richard Evesqe de Duresme qe a ly appent &c., a la provendre de Westmerlingtone. Et counta qun L., predecessour cesti Evesqe, fuit seisi, com du dreit sa Evesqe, et fist collacion a un T. de ceo, li fist installe, le quel T. fust eslieu en Dean a quel denie un autre provandre fust annex, et par tant la provandre de W. se voida et voide demura tanqe les temporaltes deviendreint en la main le Roi par la mort le dit L., issint appent, &c.—Jurisdicion fust chalenge de ceo qe la conisaunce de la voidance ne chet mye en conisaunce de cest Court.—*Non allocatur.*—Pus dit qil navoit pas autre provandre annex a la denee, issint la provandre nient voide tant com, &c.—*Et alii e contra.*—Trove fust par enquest prise par *Nisi prius* qil y avoit un autre provandre annex a la denee, et qil fut eslu en Deyn, mes il prist les profits de la provandre de W. tot le temps qe les temporaltes, &c. —*Blaik.* Trove est qe la provendre fust plein tout le temps, &c. Estre ceo, de ceo qe fust le gros point del issu, saver void ou nient void, nest rien enquis.—*Thorpe.* Il y ad voidance de dreit et voidance de feit, mes voidance de dreit ne done pas accion sanz voidance de feit, et ceo nest pas trove.—PARNING Quant il fuit eslu en dean par quel lautre provandre fuit annex donqes fuit lautre provandre void de dreit Verdit en Quare impedit.

[1] This report of the case is from T. and Harl. 741.

[2] recovere is not in Harl.

[3] From Harl. 741 alone, as far as the point at which the larger type ends.

A.D. 1340. prebend then became vacant in law and in fact, and we find that vacancy continued until the temporalities came, &c. The COURT therefore adjudges that the King do have a writ to the Bishop.

Quare impedit. § *Quare impedit* for the King.—He took his title in that a prebend became vacant because the prebendary was elected Dean, and it remained so vacant until the temporalties, by reason of the vacancy of the Bishopric of Durham, came into his hand, &c. And it was traversed, the defendant saying that the prebend was not vacant, &c. The finding was for the King; wherefore he had a writ to the Bishop.

Outlawry alleged. (13.) § One A., executor of B., had execution of a Statute Merchant, on a writ returned in the King's Bench.—Afterwards W. de Laughford and John de Newington, tenants of the lands of the obligor, who had been ousted by the execution, sued a writ out of the Chancery upon a suggestion that he who had execution had been outlawed before the execution had been sued.—The writ was directed to the Justices that, having called before them, &c., they should do right to the parties. And other suggestions were comprised in the writ.—*Thorpe* produced the writ, and certified the Court of the outlawry, and prayed restitution of the lands on the ground that every action was extinguished in the person of the executor.—PARNING. The outlawry does not prove the lands in your hand to be discharged, and you ought not to have advantage of the outlawry, for that which belonged to the outlaw accrues to the King and remains with the King until he who has right thereto sues it out of the King's hand, as if he have other execution it belongs to him to sue out execution.—*Thorpe.* If we had come by process we should have rebutted him from his action, and though the Statute[1] gives execution without process, that ought not to injure us.

[1] 13 Ed. I. (Acton Burnel).

et de feit, et cel voidance trovoms nous continue tanqe les temporaltes devindrent, &c. Si agarde la COURT qe le Roi eit bref al Evesqe. A.D. 1340.

§ *Quare*[1] *impedit* pur le Roi.—Il[2] prist son title de ceo qun provandre se voida pur ceo qe le provandrer fust eslieu en Dean, et issi voide demora tanque les temporaltes, par voidance del Evesche[3] de Duresme, devyndrent en sa mayn, &c. Et fust traverse qe ele ne fust pas voide, &c. Trove fust pur le Roi[4]; par[5] quei il ad bref al Evesqe.[6] Quare impedit.

(13).[7] § Un A., executour B., avoit execucion dun Statut Marchaunt sour bref retourne devant le Roi.—Pus W. de Laughford et Johan de Newingtone, tenantz des terres le conissour, qi furent oustes par la execucion, suyrent bref hors de la Chauncellerie sour tiel suggestion qe cely qe avoit execucion fuit utlage avant la execucion suy.—Le bref fuit directe as Justices qe, apeles, &c., feissent dreit as parties. Et autres suggestions furent compris en le bref.—*Thorpe* mist avant le bref, et certa la Court del utlaerie, et pria restitucion de terres desicom chescun accion fut ettenct en la person de executour.—PARN. Le utlaerie ne prove pas les terres estre deschargez en vostre meyn, et del utlaerie ne devez vous aver avantage, qar ceo qe a ly attent arcest al Roi et al Roi demura tanqe cely qe dreit ad le sue hors de sa meyn, com sil eit autre execucion a li attent la sute.—*Thorpe.* Si nous ussoms venu par proces nous ly ussoms rebote, et coment qe lestatut done execucion sanz proces ceo ne nous deit pas grever. Utlagherie allegge.

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[1] This report of the case is from T. and Harl. 741.

[2] Harl., qil.

[3] T., Evesqe.

[4] Harl., *ut supra*, instead of pur le Roi, the words *ut supra* possibly having reference to the other report in the same MS.

[5] Harl., sour.

[6] Harl., Evesche.

[7] From Harl. 741 alone, as far as the point at which the larger type ends.

A.D. 1340. Note as to a Recognisance.

§ Note that an execution was sued by an executor upon a recognisance made to his testator, and afterwards the executor was outlawed, wherefore the other within the term came into Court and prayed that he might have his land again.—PARNING. The land is not discharged; wherefore, &c.

Formedon.

(14.) § In a Formedon[1] there were demanded a messuage, a weir, and a certain quantity of land. And, with regard to the weir, the demandant alleged the esplees as in the taking of fish, to wit, great pike, and bream, by nets and by other contrivances, &c.—*R. Thorpe.* He demands the weir, which is, as it were, a *profit a prendre* in another's soil; besides he has placed it in his writ before the quantity of land; judgment of the writ.—And this objection was not allowed, because it is the form of writ in the Chancery, and also because by that word "weir" he shall recover the soil.—*R. Thorpe.* He has made himself heir to one in counting his count, and not by the writ; judgment, &c.—And this objection was not allowed.—Therefore he demanded view.—And he had it.

Formedon.

§ Formedon for a weir, where exception was taken for that a weir does not lie in demesne.—The exception was not allowed, because by that demand he shall recover the soil.—Therefore the tenant prayed view.—And he had it.

Aid-prayer.

(15.) § A woman prayed in aid two parceners, who came now by summons.—And the tenant said that the prayees in aid were under age, and prayed that the parol might demur.—*Stouford.* You shall not be admitted to that, because you prayed aid of them simply as of persons who were of full age; where-

[1] See Y. B., M. 13 E. 3, No. 78, where similar points were argued upon a writ of Entry *sur disseisin.*

§ Nota[1] qe execucion fust suy par un executour hors dun reconisance fait a son testatour, et puis lexecutour[2] fust utlage, par quei lautre deinz le terme vient en Court et pria qil poet reaver sa terre.—Parn. La terre nest pas descharge; par quei, &c. A.D. 1340. Nota de Reconisance. [Fitz. *Executours*, 88.]

(14.)[3] § En un forme de doun fut demande un mies, un gors, et certein quantite de terre. Et del gors il lia lez esplez com en prendre de pessehoun, saver grossez lucez,[4] et bremes,[5] par rais[6] et par aultres engyns, &c.—*R. Thorpe.* Il demande le gors qe est comme un profit a prendre en aultri soil; ovesqe ceo il lad[7] mys en son bref devant la quantite de la terre; jugement du bref.—*Et non allocatur,* qar est la forme de[8] la Chauncellerie, et auxi par cele paroule gors il recovera le soil. —*R. Thorpe.* Il se[9] ad fait heir a un[10] en son[11] counte countant, et ne my par le bref; jugement, &c.—*Et non allocatur.*—Par quei il demanda la veuwe.—*Et habuit,* &c. Forme de doun.

§ Forme[12] de doun dune gorce chalenge pur ceo quil ne chiet pas en demene. *Non allocatur,* qar par cele demande il recovera le soil.—Par quei il demanda la vewe.—*Et habuit.* Forme de doun. [Fitz. *Formedon*, 34.]

(15.)[13] § Une femme pria en eyde ij. parceners, quex vyndrent ore par la somons.—Et le tenant dit qil furent deinz age, et pria qe la paroule demurast.—*Stouff.* A ceo navendrez mye, qar vous priastes eide[14] deux simplement comme de[15] ceux qe furent de pleyn age; par Eyde priere.

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[1] This report of the case is from T. and Harl. 741.

[2] Harl., lexecucion.

[3] From L., and 25184 as far as the point at which the larger type ends.

[4] 25184, luz.

[5] L., breynes.

[6] L., raith.

[7] L., y ad.

[8] L., cest, instead of est la forme de.

[9] se is not in L.

[10] The words a un are not in 25184.

[11] son is not in 25184.

[12] This report of the case is from T. and Harl. 741.

[13] From L. and 25184 as far as the point at which the larger type ends.

[14] L., en eide.

[15] de is not in L.

A.D. 1340. fore &c.—And afterwards *Stouford* said:—Let the prayees in aid say what they will.—HILLARY. They ought not to say anything during their non-age; therefore let the parol demur, &c.

Aid-prayer. § Two persons were prayed in aid as heirs, and when they came by summons, because they were under age, they were allowed their age.

Jurata utrum. (16.) § The Warden of the Hospital of Saint Margaret without Huntingdon brought a *Jurata utrum* against one John Warde, and prayed that it might be made known, &c. And he said also, as for title, that one John de Bassyngbourne, his predecessor, was seised of the tenements in dispute in the time of King Edward the father, &c., and aliened.—*Pole.* Sir, you see clearly that at common law such a writ as this was given only for a parson, and by the Statute [1] it is given to those who cannot have any other recovery, and who have not a college, and inasmuch as he himself has not shown himself to be in the case of the Statute, we understand that he ought not to be answered as to this writ.—SCHARDELOWE. The writ is now given to him, and, if you will say more, plead your plea, &c.—*Pole.* Sir, we tell you that at the time at which he has supposed that John de Bassyngbourne, his predecessor, was seised and aliened, there was a college in the same hospital, and a common seal, in which case you can have your recovery by writ of

[1] 14 Edward III., Stat. I., c. 17.

quei, &c.—Et pus *Stouff.* Dient ceux[1] ceo qils vo- A.D. 1340.
drount.—HILL. Ils[2] ne deyvent rien dire durant lour noun age; par quei demurge la paroule, &c.

§ Deux[3] furent prie en eide come heirs, et, quant il vindrent par somons, pur ceo qils[4] furent deinz age, il ount lour age. Eide prier. [Fitz. *Age*, 87.]

(16.)[5] § Le Gardyn del Hospital de Seint Margarete[6] hors de Hountindone porta un Jure de *Utrum* devers un Johan Warde,[7] et pria qe reconu fuit, &c. Et dit auxi, com pur[8] title, qun Johan de Bassyngbourne,[9] soun predecessour, fust seisi de ceux[10] tenementz en temps le Roy E. le pere, &c., et aliena.—*Pole.* Sire, vous veiez bien coment a la comune ley tiel bref ne fuit pas done mes solement pur persone, et par lestatut il est done a ceux qe nul autre recoverir ne poient[11] aver, quex nount mye college,[12] et de ceo qil[13] mesme ne se ad mye moustre estre en[14] cas destatut, nous entendoms qe a cesti bref ne deit il[15] estre respondu.—SCHAR. Le bref luy est ore[16] done, et, si vous diez plus, par quei pledez vostre plee, &c.—*Pole.* Sire, nous vous dioms qe a mesme le temps qil ad suppose qe Johan de Bassyngbourne,[9] soun predecessour, fust seisi et aliena, il iavoit en mesme hospital college[12] et comune seal, en quel cas vous poez aver vostre re-

Jure de utrum. [Fitz. *Juris utrum*, 4.]

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[1] ceux is not in L.

[2] L. Eux.

[3] This report of the case is from T. and Harl. 741.

[4] T., il.

[5] From L. and 25184, until otherwise stated, but corrected by the record, *Placita de Banco*, Michaelmas, 14 Edward III., R°. 194, d. It there appears that the action was brought by John de Askham, Warden (*Custos*) of the Hospital of St. Margaret without Huntingdon, against John Warde and Margery his wife.

[6] L. and 25184, Luk.

[7] L., J. de O.; 25184, J. de C., instead of Johan Warde.

[8] L., par.

[9] L. and 25184, W., instead of Johan de Bassyngbourne.

[10] L., deux.

[11] L., punt.

[12] L., colige.

[13] L., qe.

[14] L., en ceo, instead of estre en.

[15] il is not in L.

[16] ore is not in L.

A.D. 1340. Entry *sine assensu fatrum et sororum;* wherefore, judgment of this writ, &c.—*W. Thorpe.* Since you do not fix upon us that there is, at this day, a college, and a writ of this kind is given me by the Statute, judgment whether the writ be not sufficiently good.—*Pole.* Your action must arise at the time at which you suppose the commencement, but at that time you would not have been able to maintain this writ since there was then a college (only that now you have expelled the brethren), and the Statute was made to remove the mischief suffered by those who had no recovery as Wardens and Chaplains of Chantries and of Chapels which had no chapter or college; wherefore, &c.—And to this SCHARDELOWE agreed, and he said that this was the intention of the Statute.—*W. Thorpe.* We tell you that we have this wardenship by the King's collation by commission out of the Chancery, and since you do not deny that we are elected, nor that we now have a college, as to what you say about the expulsion, that is nothing to the purpose, and cannot make an issue between us; wherefore judgment, as above. Besides, the Statute expressly gives us a writ of this nature. (And the Statute was read, and was in accordance with that which *W. Thorpe* said.) And we understand that even though it were as you say, which we do not admit, it would be now at our election to take our recovery by the one writ or by the other; wherefore, &c.—And SCHARSHULLE said the same.—*Pole.* Sir, if he now maintains this writ, the finding will, perhaps, be in his favour, while, perhaps, at the same time I have a ground to recover by the deed of this same John de Bassyngbourne, his predecessor, made in my favour with the consent of his brethren during the time when there was a college.—ALDEBURGH.

coverir par bref dentrer *sine assensu fratrum et sororum*; par quei jugement de cesti bref, &c.—*W. Thorpe.* Del houre qe vous natachez mye sur nous qe huy ceo jour il y ad college,[1] et par lestatut tiel bref moy[2] est done, jugement si le bref ne soit assez boun.—*Pole.* Il covent qe vostre accion resorge[3] al temps en quel vous supposez le commencement, mes a cel houre vous ne purrez mye aver mayntenu ceo bref[4] del houre qil iavoit college,[5] salve qore vous les[6] avetz enchace, et lestatut fut[7] fait pur toller le meschief de ceux qe nul recoverir avoient[8] com Gardeyns et Chapelleins de Chaunteres et de Chapels qe navoient chapistre ne college; par quei, &c.—*Et ad hoc consensit* SCHARD., qe dit qe tiel fuit lentencion del estatut.—*W. Thorpe.* Nous vous dioms qe nous avoms cesti garde de la collacion le Roy par comission hors de la Chauncellerie, et del houre qe vous ne deditez pas qe nous sumes electe, ne qe ore nous avoms college,[5] a ceo qe vous parlez de lenchacer ceo nest rien a purpos ne ne put faire issue entre nous;[9] par quei jugement *ut supra.* Ovesqe ceo, lestatut nous doune tiel bref expressement. (Et lestatut fut lieu, qe sacorda a son dit.) Et nous entendoms qe mesqe ceo fut com vous parlez, com nous ne conissoms mye, il serreit[10] a ore a nostre elleccion[11] de prendre nostre recoverir par lun bref ou par le autre; par quei, &c. —*Et idem dixit* SCHAR.—*Pole.* Sire, sil mayntynt ore cesty bref, par cas trove serra pur luy la ou par cas jeo ay cause a recoverir par le fait mesme celuy Johan de Bassyngbourne,[12] son predecessour, fait a moy par assent de sez freres, dementres qil y[13] avoit college.[14]—ALD. A.D. 1340.

[1] L., collige.
[2] 25184, ny.
[3] 25184, resirge.
[4] bref is not in L.
[5] L., collige.
[6] les is not in L.
[7] fut is not in 25184.
[8] L., iavoient.
[9] 25184, eux.
[10] L., serra.
[11] 25184, eslite.
[12] L., and 25184, W., instead of John de Bassyngbourne.
[13] y is not in L.
[14] L., collige.

A.D. 1340. If that be so, then it is your lay fee, and so your recovery is saved to you; wherefore plead your plea.—*Pole.* We vouch to warranty one R. de S., &c.—*W. Thorpe.* You shall not be admitted to such a voucher, for he is dead.—*Pole* vouched two sisters as heirs of this R.—*W. Thorpe.* You ought not to be admitted to such a voucher, for we tell you that he whose sisters you vouch, as sisters and heirs, has a son, J. by name, living in T.; wherefore, &c.—*Pole.* We have vouched at our peril; and if we had vouched one as being under age in delay of your action, perhaps your plea would be good, but not so here, &c.—*Pole* (*gratis*). There is no such J.; ready, &c.—And the other side said the contrary.—And the issue was accepted, &c.—*Quære* as to the voucher, &c.[1]

Jurata utrum for a Warden of a Hospital. And exception was taken to the writ, and it was held good. And then the tenant

§ *Jurata utrum* for John de Askham, Warden of the Hospital of St. Margaret nigh Huntingdon. The writ was adjudged good on account of the new Statute.[2] And it was alleged that this Statute operated where a *Jurata utrum* did not lie at common law, that is to say, for those who could not have a writ of Entry *sine assensu capituli*, or *sine assensu fratrum*, or the like, and not for those who have a college. But at the time of the alienation there was a college with a common

[1] The passage relating to the voucher in the record differs considerably both from the above report and from that which follows. The defendants vouched Matilda and Margery, daughters and heirs of Matilda, late wife of Robert "ad "Fontem," with their respective husbands. The plaintiff counterpleaded the warranty on the ground that one Robert "atte Welle" (the same person as Robert "ad Fontem"), who was a villein (*nativus*) of the Hospital, married Matilda, and begot upon her one William atte Welle, likewise being a villein of the same Hospital, and William had issue one Giles, who was still living, and who was the plaintiff's villein as in right of the Hospital. The plaintiff prayed judgment whether Matilda's two daughters could be vouched when Giles was living. Issue was then joined as to whether there was any such Giles living.

[2] 14 Edward III., Stat. 1, c. 17.

Sil soit issint, donqes est il vostre lay fee, issi vostre recoverir vous est salve; par quei pledez vostre plee. —*Pole.* Nous vouchoms a garrant un R. de S., &c.— [*W. Thorpe.* A tiel voucher ne serrez resceu, qar il est mort.—][1] *Pole.* Voucha ij. soers com heires cest R.— *W. Thorpe.* A tiel voucher ne devez estre resceu, qar nous vous dioms qe celuy qi soeres vous vouchez com soeres et heires si ad un fitz J. par noune en pleyne vie en T.; par quei, &c.—*Pole.* Nous avoms vouche a nostre peril; et si nous le vouchassoms com deinz age en delay de vostre accion, par cas vostre plee serreit bon, mes ne mye yci, &c.—*Pole* (de gree). Il ny ad[2] nul tiel J.;[3] prest, &c.—*Et alii e contra.*—Et lissue fuit resceu, &c.—*Quære* de voucher, &c.[4] A.D. 1340.

§ Jure[5] de utrum pur Johan Daskam,[6] gardein del[7] hospital Seint Margarete[8] juxt Huntindone.[9] Le bref agarde bon pur novel estatut. Et fust allege qe cel estatut oevre ou Jure de *utrum* ne fust pas a la comune ley, saver pur ses qe ne poaint aver bref de[10] entrer *sine assensu capituli, vel fratrum, vel hujusmodi,* et noun pas a ceux[11] qe ount[12] college. Mes a temps del alienacion il y avoit college et comune seal; Jure de utrum pur une gardein dune hospital. Et le bref fut chalenge et agarde bone. Et puis le

[1] The passage between brackets is not in 25184.

[2] L., nayd, instead of ny ad.

[3] J. is not in L.

[4] The last sentence is not in L.

[5] This report of the case is from T., and Harl. 741.

[6] The words Johan Daskam are not in Harl. 741.

[7] Harl. 741, dun.

[8] T., Luke.

[9] The words Seint Margarete juxt Huntindone are not in Harl. 741.

[10] The words bref de are not in Harl. 741.

[11] The words et noun pas a ceux are not in Harl. 741.

[12] Harl. 741, ount pas.

A.D. 1340. vouched to warranty, which was counter-pleaded because the vouchee was the plaintiff's villein, and the tenant was put to answer this. And then he said that the plaintiff's predecessor aliened to the grandfather of the vouchee at a time when there was a college and a common seal. And the plaintiff said that the House was of the King's foundation for the support of the poor, removable, &c.; and the other side said contrary.

seal; judgment of the writ.—This objection could not be allowed, unless the defendant would say that there is now a college and a common seal; for otherwise an action by writ of Entry is not given.—Therefore the tenant vouched two daughters as heirs; and the existence of their brother was alleged.—And afterwards, in Easter Term in the 15th year, the woman was admitted to defend her right on the default of her husband,[1] and she vouched one J. son and heir of her feoffor.—*Thorpe.* We tell you that J. is our villein; judgment whether our villein ought to be made a party as to us, for then he would be enfranchised.—*Pole.* We vouch at our peril, and between us an issue can not be taken as to whether he be a villein or free.—*Thorpe.* It can be for the purpose of ousting you from the voucher; but that will not be binding as between the lord and his villein. And whoever purchases ought to be aware of the condition of his feoffor; and if you were to take an estate from my villein, and I had an action for the land, and I were to bring a writ against you, it would be unreasonable that by voucher you should make my villein a party as to me, for then he would be enfranchised.—HILLARY. That is true, therefore answer whether he be a villein or not.—*Pole.* Then we tell you that the predecessor of this same plaintiff and the Brethren and Sisters, in the time when there was a college and a common seal, by their common deed, which is here, gave the tenements to the grandfather of this same person whom we vouch and his sons for ever, and the vouchee is issue of one of his sons; judgment whether in opposition to the deed it can be said that he is a villein.—HILLARY. You are a stranger to the deed; wherefore your use of it amounts only to evidence in support of the averment that he is free. —*Pole.* Then we tell you that by that deed they whose

[1] The action as shown by the record was against John Warde and Margery his wife. See note (5), p. 43.

[jugement du bref.—*Non allocatur* sil ne voet dire qil y ad ore college et comune seal];[1] qar autrement accion par bref dentre nest pas done.—Par quei le tenant voucha ij. filles come heirs; et lestre lour frere est allege.[2]—*Et postea termino Paschæ anno XV°.* la femme pur defaute son baroun fust resceu a defendre son dreit, et voucha un J. fitz et heir son feffour.—*Thorpe.* Nous vous dioms qe J. est nostre vyleyn; jugement si nostre vileyn deive estre fait partie a nous, qar donqes serreit il enfraunchi.—*Pole.* Nous vouchoms a nostre peril, et entre nous issu ne se poet prendre sil soit vileyn ou fraunk.—*Thorpe.* Si poet de vous ouster del voucher; mes ceo ne liera pas entre le seignour et son vileyn. Et qi qe purchace il deit conustre lestat son feffour; et si vous preissez estat de mon vileyn, et jeo usse accion de la terre, et portasse bref vers vous, il ne serra pas resoun qe vous ferez par voucher mon vileyn partie a moy, qar donqes serra il enfraunchi.—Hill. Cest verite; et pur ceo responez sil soit vileyn ou noun.—*Pole.* Donqes vous dioms qe le predecessour mesme celui et les freres et les soers, a temps qaunt it y avoit college et comune seal, par lour comune fet qe cy est, dona les tenementz al ael mesme cestui qe nous vouchoms et ses fitz a touz jours, et le vouche est issu un de ses fitz; jugement si contre le fet poet y dire qil soit vileyn.—Hill. Vous estes estrange al fet; par quei a cel affecte qe vous le uses ceo nest fors evidence del averement qil est fraunk.—*Pole.* Donqes vous dioms

A.D. 1340. tenant vowche a garrant, qe fut contre-plede pur ce qil est vileyn le pleintif, et a ce le tenant fut mis a respondre. Et puis il dit qe sun predecessour aliena a layel celi qe est vowche a tens qil i avoit college et comune seal. Et lautre dit qe la mesoun est de la fundacion le Roi en sustenance des povres, removable &c.; et alii e contra. [Fitz. *Counterple de Voucher*, 67.] [Fitz. *Estoppell*, 170.]

[1] The words between brackets are not in Harl. 741.

[2] For the rest of the report subsequent to the word allege there are substituted in Harl. 741 the words sour quei il sount a issue. There is also another abridgment of the case in Harl. 741.

A.D. 1340. estate we have gave as above; judgment whether in opposition to the deed you can say that it is frank-almoign or whether there ought to be a Jury.—*Thorpe.* We tell you that the Hospital is of the King's foundation, and he shall give it at his pleasure to the Master for the time being, for term of life or of years, and the Chancellor for the time being shall visit it, and it is founded only for sick persons and lepers who come and depart at their pleasure, so that they are not perpetual, and therefore there is no college or convent, but our predecessor who has been named, in his time, sold divers corodies in the Hospital to men and women, where they abode, without this that there was ever a college of perpetual Brethren or Sisters or a common seal ; ready, &c.—And the other side said the contrary.

Right. (17.) § A writ of Right was brought in a court of Ancient Demesne. And the tenant came into the

qe par cel fet il donerent, *ut supra*, qi estat nous avoms; jugement si contre le fet puisses dir qe ceo soit fraunk almoigne ou la Jure deive estre.—*Thorpe.* Nous vous dioms qe lospital est de la foundacion le Roi, et le durra a sa volunte al mestre qe serra, a terme de vie ou danz, et celui qe serra chaunceller le visitra, et il est founde fors sur malades et leprous qe venent et departent a lour volunte, issi qil ne sont pas perpetuels, et par taunt nul collige ne nul covent, mes celui nostre predecessour en son temps vendi divers conrays a hommes et femmes en lospital ou y demorerent, saunz ceo qil y avoit unqes collige de freres ou de soeres perpetuels[1] ou comune seal; prest, &c.—*Et alii e contra.* A.D. 1340.

(17.)[2] § Un bref de dreit fut porte en anciene demene.[3] Et vynt le tenant en la Chauncellerie et Dreit. [Fitz. *Proteccion*, 63.]

[1] The following are the words of the record:—"Et eadem Margeria "dicit quod prædicta Jurata inter "eos fieri non debet, &c. Dicit "enim quod prædictus Johannes "de Bassyngbourne, quem prædic- "tus Johannes de Askham in nar- "ratione sua supponit prædicta "tenementa alienasse, tempore quo "in Hospitali prædicto fuerunt "Magister, Fratres, et Sorores, et "Collegium Hospitalis prædicti, "per nomen Johannis Magistri "Hospitalis Sanctæ Margaretæ "juxta Huntyngdone, et ejusdem "loci Fratres et Sorores per car- "tam suam concesserunt et con- "firmaverunt cuidam Matilldi quæ "fuit uxor Roberti ad Fontem et "liberis suis quorum statum ipsa "habet prædicta tenementa cum "pertinentiis tenenda sibi et here- "dibus suis in perpetuum. Et "profert hic prædictam chartam "prædictorum Magistri Fratrum "et Sororum sigillo domus suæ "communi signatam quæ præmissa "testatur. Et petit judicium si "de prædictis tenementis sic alie- "natis Jurata prædicta inter eos "fieri debeat, &c. Et Johannes "de Askham dicit quod Hospitale "prædictum est de patronatu do- "mini Regis et Magister ejusdem "ponendus ad voluntatem Regis. "Et dicit quod tempore prædicti "Johannis de Bassyngbourne in "eodem Hospitali fuerunt Fratres "et Sorores tales videlicet qui em- "erunt corrodia in eodem Hospi- "tali et ibidem moram fecerunt, "et pro voluntate sua recesserunt, "et non aliqui Fratres nec Sorores "perpetui in eodem Hospitali "sicut prædicta Margeria dicit."

[2] From L. and 25184, as far as the point at which the larger type ends.

[3] L., en anciene demene porte, instead of fut porte en anciene demene.

A.D. 1340. Chancery, and made suggestion that he held the tenements as frank fee. And thereupon he had a writ &c. And now at this day the tenant produces a Protection. *Pole.* You see clearly how this suit, which is made in this Court, is the tenant's own suit, and so he is himself a plaintiff as to proving the nature of the tenancy; wherefore we understand that protection does not lie for him; wherefore we pray a writ to the bailiffs [of Ancient Demesne] that they proceed with the plea.—*W. Thorpe.* He is tenant of the land according to your own supposition by the use of your own writ. And, if he were in the Court of the lord of Ancient Demesne, the Protection would avail him; so also it seems here.—*Pole.* If the protection is to avail him, it must put the parol without day, and this Court cannot grant a re-summons because they have not the original writ. Besides, one who produces a Protection shall be resummoned, and the tenant cannot sue to resummon himself; and this suit is at his own suit, and it is for no other but himself to sue a resummons; wherefore, &c. And upon a taking of beasts a plaintiff, after avowry made upon him, produced a Protection, and a non-suit was adjudged.—*Quære* this plea in the 19th year of the father of the now King.—*W. Thorpe.* He shall be resummoned at the suit of the demandant to maintain the cause he has alleged.—And afterwards, by judgment of COURT, the parol was put without day, &c.

§ A plea was removed out of a Court of Ancient Demesne.—A Protection was produced for the tenant who sued the removal. WILLOUGHBY. If the Protection be allowed, a resummons does not lie, for the tenant ought not to resummon the plea.—*W. Thorpe.* The demandant shall have the resummons to see with certainty whether the tenant will maintain his cause.—And then by judgment the Protection was allowed.—And in this plea it was said that after avowry in Replevin a Protection ought to be allowed for the plaintiff, for then he is in a manner defendant,

fist suggestion a tenir les tenementz com[1] frank fee. A.D. 1340.
Et sour ceo avoit bref, &c. Et ore a cesti jour le tenant met avant proteccion.—*Pole.* Vous veiez bien coment cest suyte quel est fait en cesti place si est sa suyte demene, issint il mesme actour a prover la nature de la tenance; par quei nous entendoms qe protexcion ne gist mye pur luy; par quei nous prioms bref a les baillifs qils aillent[2] avant en le plee.—*W. Thorpe.* Il est tenant de la terre a ceo qe vous mesmes avez suppose par luser de vostre bref demene. Et, sil fust en la Court le seignour del auncienne demene, la protexcion luy vaudreyt; auxi semble il yci.—*Pole.* Si la proteccion luy deit valer, il covient mettre le paroule sanz jour, et cest Court yci ne put mye granter un resomons, qar ils nount pas loriginal. Ovesqe ceo, celuy qe mette avant la proteccion serra[3] resomons, et il[4] ne put mye suer de resomondre luy mesme; et cest suyte est a sa suyte demene, et a nule autre attient qe a luy; par quei, &c. Et en prise des avers le pleintif, apres avowere fait sour luy, myst avant proteccion, et une[5] noun suyte fust agarde. —*Quære* cele plee *anno xix°* *patris Regis nunc.*—*W. Thorpe.* It serra resomons a la suyte le demandant de mayntener sa cause.—Et pus, par agarde[6] de la COURT, la paroule mys saunz jour, &c.

§ Parole[7] remue hors danciene demene.—Proteccion fust mys avant pur le tenant qe suyst.—WILBY. Si la proteccion soit allowe, resomons ne gist pas, qar le tenant ne deit pas resomondre la parole.—*W. Thorpe.* Le demandant avera la resomons a vere moun si le tenant[8] voille meintenir sa cause.—Et puis par agarde la proteccion fust alowe.—Et en ceo plee fust dit qe apres avowerie en *Replegiari* proteccion deit estre alowe pur le pleintif, qar donqes il est en manere defendant, [Fitz. *Proteccion*, 65.]

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[1] L., en.
[2] L., alassent.
[3] L., suera.
[4] L., sil.
[5] L., ou, instead of et une.
[6] L., assent.
[7] This report of the case is from T., and Harl. 741.
[8] tenant is not in Harl.

A.D. 1340. though not before the avowry, for he who has his beasts quit cannot by common intendment sue a resummons.

Note. (18.) § If tenant in dower vouch to warranty the heir of her husband by reason of reversion, he shall not be admitted to disclaim the reversion.—*Quære.*

(19.) § Mesne, which R. brought against J.—The title made for the acquittal of services was that the defendant and his ancestors had acquitted the plaintiff and his ancestors and those whose estate he had from time whereof memory runneth not. And thereupon the inquest was taken, and the jury said that R. and his ancestors acquitted the ter-tenants from time whereof memory, &c., until the grandfather of him who now complains purchased, and he was distrained and brought a writ of Mesne, and died pending the plea, and afterwards his son brought a writ of Mesne, and died pending the plea. Therefore it was adjudged that the plaintiff should recover the acquittal.

Waste, for a man and his wife and a third person.

(20.) § Waste, which a man and his wife and a third person bought on their own lease, as for waste to their disinheritance in common.—And exception was taken to the writ, because it was therein supposed that the lease was made by a *feme covert,* which can not be, unless by fine.—This exception was not allowed; for if the husband and wife lease as above, the reversion belongs to the wife during the coverture, and after the husband's death if she chooses.—*Pole.* They leased the tenements to us by this deed, saving the reversion to them and to the heirs of the husband; judgment of the writ which supposes that they all have the inheritance.—*Gayneford.* At the time of the lease they all had fee simple by their purchase, so no other writ could serve me.—*Pole.* You can not say that in opposition to your deed. Besides, one of them may by his deed have released his right to another, and thereby the reversion, since by his deed he

mes devant nemy, qar celui qad ses avers quites ne poet de comune entent suyr resomons. A.D. 1340.

(18.)[1] § Tenant en dower si ele vouche a garrant leir son baroun par cause de reversion, il ne serra pas resceu a desclamer en la reversion.—*Quære.* Nota.

(19.)[2] § Mene, qe R. porta vers J.—Title dacquitance qe le defendant et ses auncestres ount acquite ly[3] et ses auncestres[4] et ses qi estat il ad du temps dount memorie ne court.[5] Et sur ceo lenquest pris, qe[6] dit qe R. et ses auncestres acquiterent les terres tenantz du temps dount memorie, &c., tanqe lael a lui qore se pleint purchacea, et celui fust destreint et porta bref de mene, et morust en pledant, et puis son fitz porta bref de mene et morust en pledant; par quei il fust agarde qe le pleintif recoverast lacquitance.

(20.)[7] § Wast, un homme et sa femme et le terce porterent de lour lees demene a lour desheritaunce en comune.—Et le bref fust chalenge de ceo qe suppose est le lees estre fait par femme coverte, qe ne poet estre si ceo ne fust par fine.—*Non allocatur;* qar si le baroun et la femme lessent *ut supra,* la reversion est a la femme durant la coverture, et apres la mort son baroun si ele voet.—*Pole.* Il lesserent les tenementz a nous par ceo fait, sauvant la reversion a eux et les heirs le baroun; jugement du bref qe suppose qil sont touz enherites.—*Gayn.* A temps du lees il avoint trestouz fee simple par lour purchas, issi autre bref ne me poet servir.—*Pole.* Vous ne poez ceo dir contre vostre fet. Ovesqe ceo, un deux poait par son fet aver relesse a un autre son dreit, et par Waste, pur une homme et sa femme et le terc.

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[1] From T. and Harl. 741.

[2] From T. and Harl. 741. This case appears to be the same as No. 53 of the Easter Term next preceding.

[3] T., les tenementz.

[4] Harl., &c., instead of et ses auncestres.

[5] T., nest, instead of ne court.

[6] T., et.

[7] From T. alone; but *see* No. 4 next above.

A.D. 1340. granted that the reversion in fee simple should belong to him.—WILLOUGHBY. The deed was not made to save or limit the reversion, but only for the freehold which passed to the tenant for the term of life; then, since nothing passed but a freehold, the fee is where it was before. And suppose that a man leases for term of life saving the reversion to himself for term of life or in fee tail, that reservation is of no avail.—STONORE. Suppose that they had rendered by fine as above, I say that no other person would have the inheritance of the reversion but the heirs of the husband, nor consequently in opposition to their deed, for the deed is admitted.—WILLOUGHBY. A deed may be avoided by the party, but a fine can not be.

Cessavit. (21.) § *Cessavit,* which one J. brought against one B., supposing that B. held of him two messuages by one service.—The tenant showed the deed of one whose estate in the seignory the demandant had, by which one whose estate in the tenancy the tenant had was enfeoffed of one messuage to hold by one service, and of the other messuage to hold by another service; judgment of the writ which supposes the tenancy to be one.—*Gayneford.* We are on both sides strangers to the deed; wherefore we will maintain our writ.—And it appeared to the COURT that he should not be admitted in opposition to the deed. But he waived the exception of his own accord. —*Thorpe.* We hold of him by the services of one penny and not by those services whereof he has counted; ready &c.—And the other side said the contrary.—SCHARSHULLE. Upon this writ issue can not be taken on the quantity of the services.—WILLOUGHBY. Why not?—*Gayneford.* He shall not have such a plea without answering as to the seisin.—But this was denied.

mesme la reversion, quant par son fet il granta qe la reversion de fee simple serreit en lui.—WILBY. Le fet nest pas fait pur sauver reversion ne tailer, mes soulement pur le franc tenement qe passa en le tenant a terme de vie; donqes, quant nient passa fors franc tenement, le fee est ou il demura devant. Et jeo pose qe homme leit a terme de vie savant reversion a lui a terme de vie ou en fee taille, ceo reservacion est de nul value. — STON. Jeo pose qil ussent rendu par fyne *ut supra*, jeo die qe nul autre serreit enherite de la reversion fors les heirs le baroun, *nec per consequens* contre lour fet, qar le fet est conu.—WILBY. Fet poet estre voide par partie, et si ne poet nient fyne. A.D. 1340.

(21.)[1] § *Cessavit*, qun J. porta vers un B., supposant qil tient de lui ij messuages par un service.—Le tenant moustra le fet un qi estat le demandant ad en la seignurie, [par quel] un qi estat il ad en la tenance fust feffe dun messuage a tener par un service, et del autre par un autre service; jugement du bref qe suppose la tenance estre un.—*Gayn.* Al fait dune part et dautre nous sumes estrange; par quei nous voloms meintener nostre bref.—Et sembloit a la COURT qe contre le fet il ne serra pas resceu. Mes il weyva lexcepcion de gree.—*Thorpe.* Nous tenoms de lui par un dener et noun pas de ceux services come il ad counte; prest, &c.—*Et alii e contra.*—SCH. En ceo bref issu ne poet estre pris sur la quantite des services.—WILBY. Par quei nient?—*Gayn.* Il navera pas tiel plee saunz respondre a la seisine.—*Quod fuit negatum.* Cessavit.

[1] From T. alone; but *see* No. 1 next above, which appears to be the same case.

A.D. 1340. Escheat.

(22.) § Hugh le Despenser brought a writ of Escheat against John de Warenne, Earl of Surrey, and Joan his wife, and against Ela, late wife of John Claroun, and against Eleanor, late wife of Guy Ferre, by several *Præcipes*, and demanded against the Earl and his wife two parts of two parts of the manor of Buckland, against Ela the third part of the two parts, and against Eleanor the residue of the same manor.[1]—And he counted that one John Claroun held of his mother Eleanor[2] the whole manor by fealty, and by rent, and he alleged the esplees as in the receipt of fealty, &c., and said that John de Claroun died without heir.—*W. Thorpe.* The form upon this writ is not to allege esplees as it is upon a writ of customs and services; judgment of the writ.—SCHARSHULLE. The count is none the less good, and I hold it to be better.—*W. Thorpe*, for the Earl. You cannot have an action, for in the time of King Henry, great-grand-father of the present King, a fine was levied between G. Ferre[3] the elder and G. Ferre the younger, of the entirety of this manor, whereof &c., by which fine G. Ferre the younger acknowledged the tenements, &c., to be the right of G. Ferre the elder, as those, &c., for which acknowledgment G. Ferre the elder granted and rendered the same tenements to G. Ferre the younger to have and to hold to him and the heirs issuing from his body, so that, if he should die without heirs of his body, the same tenements should remain to this same

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[1] The above sentence has been made to accord with the facts as stated in the record, rather than with the actual words of the French text.

[2] In the record it appears that J. Claroun was alleged to have held of Hugh's mother, Eleanor, and not of Hugh, as stated in the French text.

[3] The orthography of the record and not of the reports has been followed in the translation with respect to this name.

(22.)[1] § Hugh le Despenser porta un bref deschete vers J. Counte de Geryn[2] et Elianour de C. et Alicie de E.[3] par severals *Præcipes*, et demanda devers le Counte lez ij. parties des ij. parties del manere de Boukelond, et devers E. la tercie partie de lez ij. parties de mesme le manere, et devers Alicie le remenant.—Et counta qe un J. Claruon tient de luy le manere enter par fealte, et par rente, et lia lez espleez com en resceite de fealte, &c., et dit qil morust sanz heir.—*W. Thorpe.* La forme en cesti bref nest mye de lier lez espleez com est[4] en bref de custoumes et de services; jugement de bref.—SCHAR. Le counte ne vaut[5] ja le mayns, et jeo le tienk le melliour.—*W. Thorpe,* pur le Counte. Vous ne poitz accion aver, qar en temps le Roi H. besaile, &c., fyn leva entre G. Ferry[6] leisne et G. Ferry[6] le puisne del entere de cel manere, dount, &c., par quel fyn G. Ferry[7] puisne[8] conust[9] lez tenementz, &c., estre le dreit G. Ferry[10] leisne, com ceux, &c., pur quele conusance G. Ferry[10] le eigne[11] granta et rendi mesmes lez tenementz a G. Ferry[6] le puisne[12] a aver et tener a luy et a lez heires de soun corps issauntez, issint qe sil[13] deviast,[14] &c., que mesmes lez tenementz remeind- A.D. 1340. Eschete.

[1] From L. and 25184, until otherwise stated, but corrected by the record *Placita de Banco*, Michaelmas, 14 Edward III., R°. 102, d. It there appears that the writ was brought by Hugh le Despenser against John de Warenna, Earl of Surrey, and Joan his wife, in respect of two parts of two parts of the manor of Buckland ("Boukelond") in Surrey, against Ela, late wife of John Claroun, in respect of one part of two parts of the same, and against Eleanor, late wife of Guy Ferre, in respect of the third part of the same.

[2] 25184, Garerun.

[3] 25184, T.

[4] est is not in L.

[5] L., valut.

[6] L., Gyffery, instead of G. Ferry.

[7] L., Gefferry, instead of G. Ferry.

[8] L., leisne.

[9] 25184, conisast.

[10] L., Gyfferry instead of G. Ferre.

[11] L., puisne.

[12] L., eisne.

[13] sil is not in 25184.

[14] L., devye.

A.D. 1340. J. Claroun, upon whose death you bring this writ, to have and to hold to him and the heirs issuing from his body, and that, if he should die without heirs of his body, the same tenements should then remain to the right heirs of G. Ferre the younger. (And *W. Thorpe* showed a part of the fine.) And (said *W. Thorpe*) we tell you that G. Ferre the younger died without heirs of his body, and after his death this same J. Claroun entered, and died without heir of his body, and after his death G. de Turoy entered, as rightful heir of G. Ferre the younger, and enfeoffed us. And we demand judgment whether you can maintain this action against us on the death of one who had only a fee tail. And *W. Thorpe* said for Ela,[1] that she was the wife of this same John Claroun and held the tenements in dower and by the assignment of the aforesaid Guy de Turoy ; and (said he) we demand judgment whether, while she is living, the demandant can demand anything, &c. And *W. Thorpe* said for Eleanor[1] that she was the wife of G. Ferre the younger and held the tenements in dower; judgment whether, while she is living, the demandant can demand anything, &c.—*Stouford.* This same Guy de Ferre the younger was born out of the allegiance of England; therefore he cannot have any collateral heir. And afterward *Stouford* said that Guy de Ferre the younger died without heir, and that he did not understand that one who was altogether a stranger to Guy could plead such a plea.—*Pole.* We have alleged the fine, as above, and we have shown how we came to this land, all which you do not deny ; and even though we had not had the fine, and though we had been the greatest strangers in the

[1] See note (1), p. 58, and note (1), p. 59.

reint a mesme cestui[1] J. Claroun, de qi mort vous portez[2] cesti bref, a aver et tener a luy et a lez heires de son corps issanz, et, sil deviast[3] &c., qe adonqes mesmes lez tenementz remeindreint as dreitz heires G. Ferry[4] le puisne. (Et moustra partie de la fyn.) Et vous dioms qe G. Ferry[4] le puisne[5] morust[6] sanz heires de son corps, apres qi mort entra mesme celuy J. Claroun, et morust sanz heir de son corps, apres qi mort entra G. de Turoy[7], com dreyturel heire G. Ferry[4] le puisne, et nous enfeffa. Et demandoms jugement si de la mort celuy qe navoit qe fee[8] taille devers nous, &c., poez cest accion mayntener. Et, pur Elienore,[9] quel fust la feme mesme celuy Johan Claroun et tient lez tenementz en douwere et del assignement lavandit Gy[10] de Turroy;[11] et demandoms jugement si, vivaunt luy, put il rien demander, &c. [Et, pur Alice,[12] quele fut la feme G. F. le puisne et tient les tenementz en dowere;[13] jugement si, vivaunt lui, put il rienz demander, &c.]—*Stouff.* Mesme celuy Gy[14] de Ferry[15] le puisne nasquit hors de laligeaunce Dengleterre, par quei il ne put heir collateral aver. Et pus il dit qil morust sanz heir, et nentendi[16] mye qe celuy qe fuit a luy tote estrange tiel plee purra pledere.—*Pole.* Nous avoms allegge la fyn, *ut supra*, et avoms moustre coment nous sumes avenu a cest terre, quele chose vous deditez pas; et mesqe nous[17] nussoms my eu la fyn, tote fumes et[18] le plus estraunge

A.D. 1340.

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[1] cestui is not in L.
[2] L., nous portoms, instead of vous portez.
[3] L., devayt.
[4] L., Gyffery, instead of G. Ferry.
[5] L., eisne.
[6] L., mort.
[7] L., Turry.
[8] L., estat.
[9] *Sic* both in L. and in 25184.
[10] 25184, G.
[11] L., Try.
[12] *Sic* in 25184.
[13] The words between brackets are not in L.
[14] 25184, G.
[15] L., Ferri; 25184, F.
[16] L., nentendoms.
[17] nous is not in L.
[18] et is not in 25184.

A.D. 1340. world, we should have been able to plead the entail and to have shown that John Claroun had only an estate tail; so have we done; judgment, &c.—*Derworthy.* It is not so, as it appears to me, for if we had to consider the question of making an avowry, you would not compel us to make an avowry upon you unless you showed how you were in by very title; no more here.—BASSET. I am of opinion that whosoever may be tenant of the land, even though he may have been a disseisor, can, upon this writ, well plead as to the estate of him upon whose seisin the demandant wishes to maintain his action.—And they were adjourned, &c.

Escheat. § Hugh le Despenser brought a writ of Escheat against John de Warenne, Earl of Surrey,[1] and Joan his wife, and demanded against them two parts of two parts of the manor of Buckland; and by another *Præcipe* he demanded the third part of same manor against Eleanor who was the wife of Guy Ferre the elder;[2] and by another *Præcipe* he demanded the third part of the two parts against Ela[1] who was the wife of John Claroun, and he counted that John de Claroun held the manor of him[3] and died without heir.—*Gayneford.* Eleanor tells you that she holds the third part in dower, of the endowment of G. Ferre the elder, effected at a time earlier than that of the seisin of John Claroun on whose seisin you demand; ready to be intendent to whomsoever the Court shall adjudge.—*Gayneford* was blamed for saying that she was ready to be intendent.—Therefore he waived that, and said:—thus she holds of a higher estate; judgment whether, while she is living, you can demand anything.—And Ela[1] gave a like answer—that she held of the endowment of John Claroun.—*W. Thorpe.* The Earl and the Countess tell you that you cannot have an

[1] As to the name see note (1), p. 59.

[2] The younger, according to the report next above.

[3] See note (2), p. 58.

du[1] mounde, nous purroms aver plede la taille et moustre qe Johan Claroun navoit qe estat taille; auxi avoms fait; jugement, &c.—*Derw.* Il nest pas issint, a ceo qe me[2] semble, qar, si nous fuissoms a faire avowere, vous ne nous chacerez mye de faire avowere sur vous si vous ne moustrassez[3] coment[4] vous fuistez einz par verrai title; nynt plus yci.—Bass. Jeo entenk que qui que soit tenant de la terre tut[5] fuist il[6] un disseisour, purra bien, en cest bref, pleder al estat celuy de qui seisine le demandant voet[7] meyntener saccion,[8] &c.—*Et adjournantur, &c.* A.D. 1340.

§ Hugh[9] le Despenser porta bref de Eschet vers Johan Count de Garrenne et Johne sa femme, et demanda vers eux les ij. parties de ij. parties de manoir de Boklond; et par autre *Præcipe* demanda il la terce partie de mesme le manoir vers Elianore qe fut la femme Gy Ferre lesne; par autre *Præcipe* la terce partie de ij. parties vers Alice qe fut la femme Johan Claron, le quel manoir Johan de Claron tint de ly et morust sanz heir.—*Gayn.* Elianore vous dit qel tient la terce partie en dower, del dowement G. Ferre leisne, de eisne temps servi qe la seisine Johan Claron de qi seisine vous demandez; prest de estre entendant a qi qe la Court agarde.—Et fu blame de ceo qil dit qel fu prest destre entendant.—Par quei il weiva cel, et dist issint tent el de estat plus haut; jugement si, vivaunt ly, puissez rien demander.—Et a cel respons dona Alice a tener del dowement Johan Claron.—*W. Thorpe.* Le Counte et la Countesse vous dient qe vous ne poet accion aver, qar de ceo Eschet.

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[1] L., et.
[2] L., moy.
[3] L., moustrastez.
[4] L., que.
[5] tut is not in L.
[6] il is not in L
[7] L., voit.
[8] saccion is not in 25184.
[9] This report of the case is from Harl. 741 alone.

A.D. 1340. action, because a fine was levied of this manor between Guy Ferre the elder and Guy Ferre the younger, in which Guy the younger acknowledged the right, &c., to Guy the elder, for which acknowledgment Guy the elder rendered the manor to Guy the younger and to the heirs of his body, and if, &c., the remainder to John Claroun (on whose seisin you demand) and to the heirs of his body begotten, and, if &c, that the manor should remain to the right heirs of Guy Ferre the younger. And he died without issue, wherefore Guy Turreis, cousin and right heir of Guy the younger, entered and enfeoffed us; judgment whether you can demand anything against us. —*Stouford.* Guy the younger was an alien, who cannot by the law of this realm have any heir other than heir of his body; and you have admitted that he died without issue; so your estate, that is to say by feoffment, is by abatement; judgment whether it lies in your mouth to say that John Claroun had only a fee tail. And inasmuch as you do not deny our seignory, nor that John Claroun died without heir, we demand judgment, and pray seisin of the land. On the other hand, you do not show by very title that you are our tenant; wherefore, if you do not make yourselves privy to us, you ought not to be admitted to say that.—*Thorpe.* There lies in the mouth of every tenant an answer to rebut the demandant from his action, and this action is not maintainable on the seisin of tenant in fee tail, or of tenant for term of life.—*Stouford.* According to what you say, we shall in that case be ousted from action of escheat and from action of seignory, for, according to what you say, no one had anything but a fee tail by the fine.

§ Escheat against three persons by different *Præcipes*, supposing that the demandant's tenant died without heir.—*Thorpe.* A fine was levied between him whom you make your tenant and one G., by which G. rendered to A. who, you say, was your tenant, to hold to him and the heirs of his body, and if he

manoir fyn se leva entre Gy Ferre leisne et Gy Ferre le puisne, ou Gy le puisne conust le dreit, &c., a Gy leisne, pur quel reconisance Gy leisne rendi le manoir a Gy le pusne et as heirs de soun corps, et si, &c., le remeindre a Johan Claron, de qi seisine vous demandez, et as heires de son corps engendres, et si, &c., qe le manoir remeindreit, as dreits heires Gy Ferre le pusne. Et morust sanz issu, par quei Gy Turreis, cosin et dreit heir Gy le puisne entra et nous enfeffa; jugement si vers nous rien pussez demander.—*Stouf.* Gy le pusne fu alien, qe ne peut par ley de ceste terre aver autre heir fors de soun corps; et vous avez conu qil morust sanz issu; issint vostre estat, saver par feffement, de un abatement; jugement si en vostre bouche gise a dire qe Johan Claroun navoit qe fee taille. Et de ceo qe vous ne dedites pas nostre seignurie, ne qe Johan Claron morust sanz heir, nous demandoms jugement, et prioms seisine de terre. Daltrepart, vous ne moustrez mye par verey title qe vous estez nostre tenant; par quei, si vous ne vous facez prive a nous, vous ne devez estre resceu a cel. —*Thorpe.* En bouche de chescun tenant gist le treres-pons a reboter le demandant daccion, et cest accion nest pas meintenable de seisine de tenant en fee taille, ne de tenant a terme de vie.—*Stouf.* Par vostre dit, en ceo cas nous serroms ouste daccion de eschet et daccion de seignure, qar, a vostre dit, nul navoit fors fee taille par la fyn. A.D. 1340.

§ Eschete[1] vers iij. par divers *Præcipes*, supposaunt qe son tenant morust saunz heir.—*Thorpe.* Fyne se leva entre celui qe vous faites vostre tenant et un G., par quel G. rendi a A. qi vous dites estre vostre tenant, a lui et les heirs de son Eschete.

[1] This report of the case is from T. alone.

A.D. 1340. should die, &c., remainder to one J. and his right heirs; and *Thorpe* said that one A., brother and heir of J., enfeoffed the tenant; judgment.—*Stouford.* We tell you that J. died without heir; judgment whether such a plea lies in your mouth; for, if you had said no more than that he had only a fee tail, that would not be a plea if you had not made yourself privy in order to allege that matter. Now we have destroyed the cause whereby you think to have the advantage.—*Thorpe.* And we demand judgment, since you do not deny that he had only a fee tail, whether on his seisin you can maintain this writ.—*Stouford.* No other than our tenant can plead the plea which you plead; and, since you can not be our tenant in opposition to what we have stated, judgment.—And so to judgment.

Novel Disseisin.

(23.) § Novel Disseisin, before WILLOUGHBY, SADINGTON, and BAUKWELL, against a woman and several others who alleged that the plaintiff was outlawed. And they were told to produce the record. And afterwards the plea was without day through the absence of the Justices. And afterwards the Assise was re-attached before WILLOUGHBY and BAUKWELL by *si non omnes.* And then all made default except the woman and one H. The woman was admitted as to parcel, and pleaded to the assise. H. produced a release of all manner of actions, and the plaintiff said that he should not be received to plead that, and since he had failed to produce the record [of outlawry] prayed the assise for the damages. H. alleged that he was under age; wherefore they were adjourned. And on the day given WILLOUGHBY did not come, but SADINGTON and BAUKWELL came, and they adjourned the parties on that point into the Bench.—*Thorpe.* One Justice by himself cannot record what took place before his companion and himself; wherefore BAUKWELL alone can not record what took place before WILLOUGHBY and himself; so the whole is discontinued.—This was not allowed, because what was done on that day was entered, and WILLOUGHBY, with whom the record remained, sent it under the seals of himself and his companions; wherefore it was held good enough. And because H., who uses the deed, is still under age, it seemed to the COURT

corps, et si[1] deviast &c., remeindre a un J. et ses heirs; et dist qun A., frere et heir J., lui enfeffa; jugement. —*Stouf.* Nous vous dioms qe J. morust saunz heir; juge-jugement si tiel plee en vostre bouche gise; qar si vous nussez dit pluis mes qil avoit forsqe fee taille, ceo ne serreit pas plee si vous nusses fait prive daleger la chose. Ore nous avoms destrut la cause par quele vous bies aver lavantage.—*Thorpe.* Et nous jugement, del houre qe vous ne dedites qil navoit forsqe fee taille, si de sa seisine puisses ceo bref meintener.—*Stouf.* Autre qe nostre tenant ne poet pleder le plee qe vous pledes; et, del houre qe vous ne poez estre nostre tenant contre ceo qe nous avoms dit, jugement.—*Et sic ad judicium.* A.D. 1340.

(23.)[2] § Novele disseisine, devant WILBY., SAD., et BAUK., vers une femme et plusours autres qe alegerent qe le pleintif est utlage. *Et dictum est quod habeant recordum.* Et puis la parole sanz jour par absence des Justices. Et puis retache devant WILBY. et BAUK. par "*si non omnes.*" Et donqes touz firent defaute forsqe la femme et un H. La femme fust resceu dune parcele, et pleda al assise. H. myst avant son relees de chescune manere daccion, et le pleintif dist qil ne serra pas resceu, mes del houre qil ad failly del record il pria assise des damages. H. alegea qil est deinz age; par quei il furent ajournez. A quel jour WILBY ne vient pas, mes SAD. et BAUK., et journerent les parties sur cel point en Bank.—*Thorpe.* Un Justice aperlui ne poet recorder ceo qe fust fait devant son compaignoun et lui; par quei BAUK. ne poet recorder soul ceo qe fust fait devant WILBY et lui; issi est tout discontinue.—*Non allocatur,* qar ceo qe fust fait a cel jour fust entre, et WILBY, vers qi le record demora, le manda soutz son seal et ses compaignouns; par quei il est tenu assetz bon. Et pur ceo qe H., qe use le fet, est uncore deinz age Novele disseisine.

[1] T., issi.

[2] From T. alone. This appears to be another of the many reports of the case printed No. 2 next above.

A.D. 1340. that he should be admitted to plead the deed.—Wherefore *Pole* denied it.—And note that H. was not tenant, but the release was of actions personal and real, &c., and the deed was dated in a foreign county.

Debt for R. and A., his wife, for that the defendant bound himself to A. and to one B., in case he aliened land so that his son did not have the inheritance. And he did aliene, so, &c. And exception was taken to the writ because the executors of B. were not named. And this exception was not allowed. And afterwards exception was taken because the obligor was still alive, so, &c. And afterwards a release of actions by B. was produced, and it was denied, &c.

(24.) § Debt, brought by Reginald Pavely and Alice his wife. And they counted that the defendant bound himself to Alice and to one Ralph de Monthermer in 1,000*l.* on condition that if the defendant did not aliene his manors of A. and B., so that his son [1] could have the inheritance of them after his death, then the obligation should lose its force, and that if he did aliene, &c., it should stand good; and they counted that the defendant aliened the manor of B. to two chaplains after the death of Ralph, whereby an action accrued, &c.—*R. Thorpe.* The executors of Ralph are not named; judgment of the writ.—WILLOUGHBY. Plead over, for an action is given to the survivor.—*Thorpe.* You see clearly how the obligation is conditional, that is to say, if he aliened so that his son did not have the inheritance through him; and he himself is still alive so that his son may yet inherit; judgment, &c. —*Pole.* That is to the action.—*Thorpe* did not dare to abide judgment, and produced a release by Ralph of all manner of actions; judgment whether in opposition to the deed, &c.—*Derworthy.* We show that the action accrued to us after the death of Ralph; judgment whether the law puts us to answer to his deed.—And then he did not dare to abide judgment; wherefore he said that Ralph did not release by the deed; ready, &c.; for Reginald was a stranger. And the issue was counterpleaded, because he could deny it as well as an executor could deny a release by his testator. And afterwards

[1] *i.e.*, as appears by the record, Robert Achard's eldest son, Peter.

semble a la COURT qil serra resceu devers le fet.—Par quei *Pole* le dedit.—*Et nota*, qe H. nest pas tenant, mes le relees est daccions personels et reals, &c., et le fet fust dune date en forein counte. A.D. 1340.

(24.)[1] § Dette par R. Pavely et Alice sa femme. Et conta qe le defendant sobligea a Alice et un Rauffe de Monthermer[2] en M.[3] *li* issi qe si le defendant nalienast pas ses maners de A. et B., issi qe son fitz purreit estre enherite apres sa mort, qadonqes lobligacion perdreit sa force, et si alienast, &c., qele serreit bone; et conta qe le defendant aliena le maner de B. a ij chapleyns apres la mort Rauffe,[4] par quei accion acrust, &c.—*R. Thorpe.* Les executours Rauffe[4] ne sont pas nomes; jugement du bref.—WILBY. Dites outre, qar accion est done a lui qe survit.—*Thorpe.* Vous veez bien coment lobligacion est condicionel, saver sil alienast issi qe son fitz ne fust enherite par lui; et il est mesme uncore en vie, issi purra son fitz uncore estre enherite; jugement, &c.—*Pole.* Cest al accion.—*Thorpe* nosa demorer, et mist avant un relees de Rauffe[4] de chescune manere daccion; jugement si contre le fet, &c. — *Derworth.* Nous moustroms qe laccion nous acrust apres la mort Rauffe;[4] [jugement] si a son fet la ley nous mette a respondre.—Et puis il nosa entendre; par quei il dist qil ne relessa pas par le fet; prest, &c.; qar il est estraunge. Et lissu fust contreplede pur ceo qil le purreit dedir si bien come executour le relees son testatour. Et puis par avys de

Dette pur R. et A. sa femme de ce qe le defendant se obligea a A. et a une B., en cas qe il aliena terre issi qe sun fitz ne serreit enherite. Et il aliena, issi, &c. Et le bref challenge de ce qe les executours B. ne furent pas nomez. *Et non allocatur.* Et puis de ce qe il est uncor en pleine vie, issi, &c. Et puis relees B. fust mis avant qe fute dedite, &c.

[1] From T. alone, but corrected by the record *Placita de Banco*, Michaelmas, 14 Edward III., R°. 165 d. It there appears that the action was brought by Reginald de Pavely and Alice his wife, against Robert Achard.

[2] T., J., instead of Rauffe de Monthermer, who, according to the record, was Alice's previous husband.

[3] T., C.

[4] T., J.

A.D. 1340. by consideration of the COURT they were at issue whether he released by the deed or not.[1]

Quare impedit.

(25.) § Our Lord the King brought his *Quare impedit* against the Bishop of Lincoln, and counted that it belonged to him to present to the Prebend of North Kelsey, &c., and counted that one Oliver de Sutton, heretofore Bishop of Lincoln, presented one, John de Dalderby by name, to the same prebend, and that Oliver died, and therefore the temporalities of the said Bishopric were seized into the hand of King Edward, the grandfather, &c., and that at such time John de Dalderby was created Bishop, by which creation the said prebend became vacant, and by that vacancy the right of presenting accrued to King Edward the grandfather, and from him the King made his descent. —*W. Thorpe.* While the temporalities of the Bishopric were in the King's hand the prebend did not become vacant; ready, &c.—*Stouford.* To that general averment you shall not be admitted since you do not deny that J. de Dalderby was Prebendary at the time when he was created Bishop, by which creation every benefice of a lower nature ceased; therefore it cannot be understood, when you do not deny the creation, but that the prebend became vacant; wherefore, &c.—And note that *W. Thorpe* in his answer made protestation that he did not admit that this J. de Dalderby was Prebendary.—*R. Thorpe.* That cannot be held as not denied by us, because we have saved the point by protestation;

[1] According to the record, when the general release was pleaded, the plaintiffs replied that Ralph did not release action as to the 1,000*l.*, and issue was joined thereon.

COURT ils sount a issu le quel il relessa par le fet ou noun.[1] A.D. 1340.

(25.)[2] § Nostre Seignour le Roi porta son *Quare impedit* vers Levesqe de Nicholle, et counta qe a luy appent a presenter a la provendre de N. Kelsey, &c., et counta qe un Olyver de Souttone, jadis Evesqe de Nicholle, a mesme la provendre presenta un Johan de Dalderby[3] par noun, et dit qe Olyver morust, par quei les temporaltes du dit Evesqe furent seisiz en la mayn le Roi E. laiel, &c., et dit que a tiel temps Johan de Dalderby[4] fuit cree en Evesqe, par quiel creacion la dite provendre se voyda, par quel voydance dreit de presenter acrut[5] a E. laiel, et de luy fist la descente, &c.—*W. Thorpe.* [Endimenters qe les temporaltes Levesqe furent en la meyn le Roi le provendre ne se voida pas; prest, &c.—*Stouff.*][6] A cel[7] averrement general navendrez vous mye del houre qe vous ne dedites pas qe J. de Dalderby[8] fut provendre al temps quant il fut cree en Evesqe, par quel creacion chesqun benefice de plus bas cessa; issi ne put il estre entendu, quant vous ne dedites pas le creacion, mes[9] quil fut voyde; par quei, &c.—*Et nota W. Thorpe* en soun respons fist protestacion qil ne conust[10] mye que celuy J. de Dalderby[4] fuit provendrer.[11]—*R. Thorpe.* Ceo ne put mie estre tenu a nynt dedit de nous, qar nous avoms par protes- Quare impedit.

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[1] There is an abridgment of this case in Harl. 741.

[2] From L. and 25184 as far as the point at which the larger type ends, but corrected by the record *Placita de Banco*, Michaelmas, 14 Edward III., R°. 176. There is an abridgment corresponding with the beginning of this report in Harl. 741.

[3] L., B.; 25184, D.; Harl., Balderby.

[4] L. and 25184, D.

[5] L., ascrut.

[6] The words between brackets are not in L.

[7] 25184, tiel.

[8] L., T.; 25184, D.

[9] mes is not in L.

[10] 24184, connissat.

[11] L., provendre.

A.D. 1340. besides we shall not be able to have an issue on the question whether he was Prebendary or not, for, even though it were found that the vacancy was through another cause, the King would still have a writ to the Bishop, and for that reason we have tendered a general averment which comprises every matter that could give this presentation to the King; wherefore we understand that this averment is admissible.—*Stouford.* If so much were found in favour of the King by a jury as shall now be not denied by you, we understand that we should have a writ to the Bishop for the King; wherefore, &c. —WILLOUGHBY. Nothing shall be held as not denied by any one except that which could make an issue between you and the person who is party with you, and which the party could traverse; but now the questions whether he was Prebendary or not, or whether he was created Bishop or not, could not make an issue between you; and this issue which he tenders here is more to the advantage of the King than any other, for he traverses the point which you take for title to have this presentation for the King, and also every other; therefore, will you accept the averment?—*Stouford* said as above. Besides, if the action were between other parties, and one counted of several presentations, issue would be taken on one of them, but the others would be held as not denied; so also it seems in this case for the King that, when the cause of the vacancy in this instance is not denied by the defendant, he shall not have the averment which he tenders as it is absolutely contrary to that cause. And, Sir, we have seen, before yourself, issue taken on the cause of a vacancy.— WILLOUGHBY. Very likely; but, perhaps, that was by consent of the parties; but in the present case it appears

tacion salve; ovesqe ceo nous ne purroms mye aver issu sour ceo le[1] quel il fuit provendre ou ne my, qar, mes qe le voidance fuit trove par aultre cause, unqore le Roi averoit[2] bref al Evesqe, et pur ceo nous avoms tendu un generale averrement, quele comprent chescun matere[3] qe put doner cest presentement au Roi; par quei nous entendoms qe cest averrement est resceivable.[4]—*Stouff.* Si tant fuit trove par enqueste pur le Roi com serra ore nynt dedit de vous, nous entendoms daver bref al Evesqe pur le Roi; par quei, &c.—WILUGBI. Aultre rien ne serra nyent dedit dun homme mes ceo qe put faire issue entre [vous et cesti qest ovesqe vous][5] partie, qele la partie put traverser; mes ore lequel il fuit provendre ou ne mye, ou lequel il fut cree en Evesqe ou ne mye, ne put mye faire issue entre vous; et cest[6] issue qil tend si[7] est plus en avantage du Roi qe nul[8] aultre [qar il transverse le][5] poinct [quel vous pernez pur title daver cest presentement a Roi, et auxi a chesqun aultre];[5] par quei volletz laverrement? —*Stouff., ut supra.* Ovesqe ceo, si ceo fuit entre aultres parties, et home countast de plusours presentements, issue se prendra sour un, mes lez aultres serront tenuz com nyent deditz; auxi semble il yci pur le Roi qe, quant la cause de la voydance si est nyent dedit de lui,[9] il avera mye laverrement quele il tend,[10] qe est purement a contrare de ceo. Et, Sire, devant vous mesmes nous veismes[11] issue pris sour la cause dun voydance.—WILUGBY. Jeo croy bien; mes par cas ceo fust par assent deo partiez; mes en ceo cas icy[12] il semble a moy qe lissue quel il tend[13] si

A.D. 1340.

[1] The words ceo le are not in L.
[2] 25184, avera.
[3] L., manere.
[4] L., resceyval.
[5] The words between brackets are not in 25184.
[6] L., ceo est.
[7] 25184, tendi, instead of tend si.
[8] nul is not in 25184.
[9] L., ley.
[10] 25184, tendy.
[11] 25184, veyimes.
[12] L., si.
[13] 25184, tendi.

A.D. 1340. to me that the issue which he tenders is good ; and in the case which you put of several presentations it is in the election of the party to traverse which he pleases ; wherefore, &c.—And afterwards the averment was admitted.[1]

Quare impedit. § *Quare impedit* for the King against the Bishop of Lincoln in respect of a prebend. And he took his title in that the Prebendary was created a Bishop, and so the prebend became vacant, and remained vacant until the temporalities came into the hands of King Edward, father of our Lord the King.—*Thorpe.* We do not admit that he was Prebendary, but we tell you that the prebend did not become vacant nor was it vacant while the temporalities were in the King's hand ; ready, &c.—*Stouford.* Since he does not deny that he was Prebendary nor that he was created a Bishop, which matter per force proves the King's title, judgment whether the averment lies.—Willoughby. It may be that he was not Prebendary, and that question will not make an issue against the King, for the King's title will not be thereby traversed, and the issue which he tenders is in disproof of the King's title to all intents ; wherefore it seems to us that the issue is good.—*Stouford.* It does not seem so to me.

Wardship. (26.) § Wardship.[2]—The Sheriff testified that the defendant had nothing, wherefore a writ issued to another Sheriff in the form of *testatum est.* Afterwards the parol was without day. And to the resummons sued to the Sheriff where it was testified that he had, &c., it was returned that he had nothing. Wherefore the plaintiff prayed a writ to summon the defendant in the lands which he had on the day of the purchase of the writ. And this was granted him. And nevertheless it was contrary to the opinion of the clerks.

Fine. (27.) § A fine, by which a husband and his wife granted and released whatever they had for the life of the wife, and the other party to the fine, who received, granted to them a rent charge for the life of

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[1] *i.e.*, as appears by the record, that the prebend was not vacant at the time at which the temporalities were in the hand of Edward I., on which point issue was joined.

[2] See Y. B., Hil., 14 E. 3, Nos. 59 and 75.

est boun; et en le cas quel vous avez mys de plusours presentements il est en la eleccion le partie de traverser quel que[1] luy plest; par quei, &c.—Et pas laverrement fut[2] resceu, &c. A.D. 1340.

§ *Quare*[3] *impedit* pur le Roi vers Levesqe de Nicole dune provandre. Et prist son title de ceo qe le provandrer fust cree en Evesqe, issi se voida, et voide demora tanqe les temporaltes deviendrent en la mayne le Roi E., pere nostre seignur le Roi.—*Thorpe.* Nous conisoms pas qe celui fust provandrer, mes vous dioms qe la provandre se voida pas ne fust pas voide esteaunt les temporaltes en la mayn le Roi; prest, &c.—*Stouf.* Del houre qil ne dedit pas qil fust provandrer ne qil fust[4] cree en Evesqe, quele chose par force prove le title le Roi, jugement si laverement y gise.—Wilby. Poet estre qil ne fust pas provandrer, et cela ne fra[5] pas issu contre le Roi, qar son[6] title ne[7] serra pas par tant traverse, el lissu quele il tende desprove le title le Roi a chescun entente; par quei il nous semble qe lissu est bon.—*Stouf.* Si ne fait il[8] pas a moy. Quare impedit.

(26.) § [9] Garde.—Le Vicounte tesmoigna que la defendant[10] nad rien, par quei bref issit a autre Vicounte per *testatum est.* Puis la parole saunz jour. Et a la resomons suy a Vicounte ou tesmoigne fust qil avoit, &c., fust retourne qil navoit[11] rien. Par quei il pria bref de lui somondre en les terres qil avoit jour du bref purchace. Et ceo lui fust graunte, *et tamen contra opinionem clericorum.* Garde. [Fitz. *Proses*, 26.]

(27.)[9] § *Finis,* par quele le baroun et sa femme granterent et relesserent quanquil avereint[12] pur la vie la femme, et lautre que resceut granta a[13] eux a la vie la Finis. [Fitz. *Fynes*, 58.]

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[1] que is not in 25184.

[2] fut is not in L.

[3] This report of the case is from T. and Harl. 741, in which latter MS. are two reports or abridgments.

[4] Harl., fust pas.

[5] Harl., fust.

[6] 25184, solom le.

[7] 25184, il ne.

[8] il is not in Harl.

[9] From T. and Harl. 741.

[10] Harl., la partie, instead of le defendant.

[11] Harl., nad.

[12] Harl., quant il aveint, instead of quanqil avereint.

[13] T., pur.

A.D. 1340. the wife.—STONORE. A fine must be final; and, therefore, we cannot receive any fine by grant and render, or release for term of life, if we do not know by the same fine to whom the right will afterwards remain.

Wardship. (28.) § Wardship.—At the return of the Grand Distress the parties took a *Prece Partium*, and at another day the plaintiff prayed the Proclamation, and he could not have it until the Distress had again issued.—See the Statute.[1]

Formedon. (29.) § Formedon for rent.—*Pole.* Of the tenements put in view one A holds so much, and we are not tenant; judgment of the writ.—*Gayneford.* You shall not be admitted to say that, for, pending our writ, one R. brought a writ against you in respect of the same tenements, and you answered as tenant; judgment.—This exception was not allowed, because he is a stranger. Wherefore he offered to aver that the person against whom the writ was brought was fully tenant.—And the other side said the contrary.

Wardship. (30.) § William Brat and Joan his wife brought a writ of Wardship against Alice, who was the wife of William Lombard, and demanded the wardship of the body and of the lands, &c.—*Pole.* As to the lands, the infant's ancestor held of you in socage; ready, &c. And, as to the body, we tell you that W. Roos, of Hamelak, seized it by one his bailiff, because the infant's ancestor held certain tenements of him in knight-service, and leased to us the wardship of the infant until the full lawful age of the infant, by this deed which is here, and we vouch to warranty this same, W. Roos.—*R. Thorpe.* Sir, you see

[1] 13 Ed. I. (Westm. 2), c. 35.

femme une rente charge.—STONORE. Fyne covient estre fynal; et pur ceo ne pooms resceivre nule fyne de grant rendre, ne relees pur terme de vie, si nous ne [1] sachoms par mesme la fyne a qi le dreit demora apres. A.D. 1340.

(28.) [2] § Garde.—A la graund destresse retourne les parties pristrent *Prece Partium*, et a un autre jour le pleintif pria la proclamacion, *et non potuit habere*, tanqe la destresse fust autrefoitz issue.—*Vide Statutum.*[3] Garde. [Fitz. *Proclamacion*, 8.]

(29.) [2] § Forme doun de rente.—*Pole.* Des tenementz mys en vewe un A tient [4] tant, nous ne sumes pas tenant; [5] jugement du bref.—*Gayn.* Vous ne serrez resceu, qar, pendant nostre bref, un R. porta bref vers vous de mesmes les tenementz, et vous respondistes come tenant; jugement—*Non allocatur*, qar il est estrange. Par quei il tendi daverer que pleinement tenant.—*Et alii e contra.* Forma donationis. [Fitz. *Estoppel*, 171.]

(30.) [6] § William Brat [7] et Johane sa femme porterent un bref de garde vers Alice, qe fuit la femme William Lombard, et demanderent le garde du corps et des terre, &c.—*Pole.* Quant a la terre, launcestre lenfant tient de vous en sokage; prest, &c. Et, quant al corps, nous vous dioms qe W. Roos de Hamelak le seisi par un soun bailli, pur ceo qe launcestre lenfant tient de luy ascuns tenementz [8] en chivalrie et nous lessa la garde de luy tanqe a leal age [9] lenfant, par ceo fait qe ici est, et vouchoms a garrant mesme cesti W. Roos.—*R.* [10] *Thorpe.* Sire, vous veiez bien coment il ad [11] Garde.

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[1] ne is not in Harl.

[2] From T. and Harl. 741.

[3] The words *Vide Statutum* are not in Harl.

[4] Harl., attent, instead of A. tient.

[5] The words nous ne sumes pas tenant are not in T.

[6] From L. and 25184, as far as the point at which the larger type ends.

[7] L., Warde.

[8] L., ascun temps, instead of ascuns tenementz.

[9] L., alleage, instead of a leal age.

[10] L., W.

[11] L., ayd.

A.D. 1340. clearly how he has traversed the cause which would give us this wardship, that is to say, the nature of the tenancy, and so this plea is to the whole writ; wherefore as to the voucher we pray to be discharged. — WILLOUGHBY. Certainly, you pray what is reasonable, for, if he is able to maintain the nature of the tenancy to be such as he has said, you will not recover anything. —Wherefore, *R. Thorpe* said:—The infant's ancestor held of us in knight-service; ready, &c.—And the other side said the contrary.—And they were ousted from the voucher, &c.

Wardship. § Wardship of the lands and body.—*Pole.* As to the lands, the ancestor held of you in socage; ready, &c. As to the body, we vouch to warranty.—*Thorpe.* The ancestor held of us by knight-service; ready, &c.—And the other side said the contrary. — WILLOUGHBY. You are at issue on the whole writ; wherefore we oust you from the voucher.

Præcipe quod reddat. (31.) § A writ was brought in the County of Chester. —The tenant vouched to warranty one of a foreign county; wherefore process was made against him, according to the Statute,[1] here in this Court, until the return of the *Cape ad valentiam*, at which day one for the vouchee produced a Protection.—*Gayneford.* We understand that in this case Protection does not lie, for this Court has not the original writ, wherefore, if the parol demur without day, the Court cannot grant a re-summons, &c.—Notwithstanding this, the Protection was allowed.—*Quære* as to the re-summons—how it shall be?

Protection allowed. § A plea was removed out of the County of Chester, because one of a foreign county was vouched, against whom process

[1] 6 Ed. I. (Stat. Glouc.), c. 12. See 2 Inst. 324.

traverse la cause quel nous dorreit[1] ceste garde, cest assaver la nature de la tenance, issint est ceo plee a tot; par quei en dreit del voucher nous prioms estre[2] descharge.—WILUBY. Certez vous priez resoun, qar, sil purra mayntener la nature de la tenance tiel com il ad[3] dit, vous ne recoverez nul rien.[4]—Par quei *R. Thorpe.* Launcestre lenfant tynt[5] de nous en chivalrie;[6] prest, &c.—*Et alii e contra.*—Et furent oustez del voucher, &c. A.D. 1340.

§ Garde[7] de terre et corps.—*Pole.* Quant a la terre, il tient de vous en sokage; prest, &c. Quant a corps, nous vouchoms a garrant.—*Thorpe.* Il tint de nous par service de chivaler; prest, &c.—*Et alii e contra.*—WILBY. Vous estes a issu sour[8] tout ceo bref; par quei nous vous[9] oustoms de voucher. Garde. [Fitz. *Double Plee*, 27.]

(31.)[10] § Un bref fut porte en le Counte de Cestre. —Le tenant voucha a garrant un foreyn; par quei proces fut fait devers luy, solon lestatut, yci en ceste place tanqe al *Cape ad valentiam* retourne, a quel jour un pur[11] le vouche myst avant proteccion.—*Gayn.* Nous entendoms qe en cest cas yci proteccion ne gist mye, qar cest Court nad mye loriginal, qar quei, si la paroule demurge sanz jour, ele ne put mye granter une resomons, &c.—*Hoc non obstante* la proteccion fut[12] alowe.—*Quære* de la ressommouns coment il serra. Præcipe quod reddat.

§ Parole[13] remue hors de Counte de Cestre, pur ceo qe forein fust vouche, vers qi proces fust fait en Bank; et puis Proteccion alowe.

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[1] 25184, durreit.
[2] 25184, destre.
[3] L., yad.
[4] 25184, nuls rienz, instead of nul rein.
[5] 25184, tient.
[6] 25184, chivalte, instead of en chivalrie.
[7] This report of the case is from T., and Harl. 741.
[8] T., a.
[9] vous is not in T.
[10] From L. and 25184, as far as the point at which the larger type ends.
[11] The words un pur are not in L.
[12] L., fusit.
[13] This report of the case is from T. alone. There is one similar in Harl. 741, slightly abridged at the end.

A.D. 1340. was made in the Bench; and afterwards a Protection was produced for the vouchee.—*Gayneford.* If the Protection be allowed, the defendant will not have a resummons, for it must be sued against the tenant, and the tenements are in the County of Chester.—Notwithstanding, it was allowed.—*Quære* as to the process.

Assise of Novel Disseisin.

(32.) § Sir John Inge brought an assise of Novel Disseisin against Richard de Parys and Maud his wife, and T. de C., and others, and made his plaint in respect of tenements in "Stipenhith."—*W. Thorpe.* All but T. are here by bailiff (except Richard de Parys)[1] and tell you that the vill has for name "Stipenhiht;" judgment of the writ. And, if it be found ["Stipenhith"], they tell you that they have committed no tort. And, as to Richard, he tells you that he has nothing in this land except jointly with Thomas de C., who is named in the writ, and with W. de D., who is not named, &c.; judgment of the writ; and as to the joint-tenancy he produced a charter.—*Stouford.* The assise is awarded against Thomas de C. for his default, and, if this plea is to avail you, it will give advantage to him as well as to you; and, since you do not say anything else, we demand judgment and pray the assise.—*W. Thorpe.* It is not reasonable that I should lose my plea through his default, and if I had had no deed, and had pleaded the plea in abatement of the writ to the assise by the words, "if it be found," and this exception had been found true by the assise, the whole writ would have abated; where-

[1] According to the record Richard de Parys appeared for himself, and as bailiff for the rest.

proteccion fust mys avant pur le vouche.—*Gayn.* Si la proteccion soit alowe le defendant navera pas resomons, qar ele covient estre suy vers le tenant, et les tenementz sont el counte de Cestre.—*Non obstante,* ele est alowe.—*Quære* proces. A.D. 1340.

(32.)[1] § Sir Johan Inge porta un assise[2] de novele disseisine[3] devers Richard[4] [de] Parys, et Maude[5] sa femme, et T. de C., et altres, et se[6] pleint, &c., in Stipenhith.[7]—*W. Thorpe.* Touz, forspris T., sunt yci par baillif, estre Richard de P., et vous diount qe la ville ad a noun Stipenhiht[8]; jugement de bref. Et si trove soit, ils vous diount qil nount fait nul tort. Et, quant a Richard, il vous dit qil nad rien en ceste terre si noun joynt ove Thomas de C., qest nome en le bref, et ove W. de D., nyent nome, &c.; jugement de bref; et de ceo moustra chartre.—*Stouff.* Devers Thomas de C. lassise est agarde par sa defaute, et, si cesti plee vous deit[9] valere, il dorra[10] avantage a luy auxi bien cum a vous; et, del houre qe vous ne dites autre rien, nous demandoms jugement et prioms lassise.—*W. Thorpe.* Par sa defaute il nest pas reson que jeo perde mon plee, et si jeo nusse mye fait et usse plede le plee[11] en abatement de bref a lassise, par si trove soit, et ceste excepcion ust este trove veritable par lassise tote le bref abatereit; par quei Assisæ Novæ Disseisinæ. [14 Li. Ass., 15.]

[1] From L., and 25184, as far as the point at which the larger type ends. The corresponding record appears among the *Placita de Banco,* Michaelmas 14 Edward III., R°. 180 d. The plaint was in respect of tenements in East Smithfield, and "Stybenhythe" (Stepney). Nothing appears on the roll as to the misnomer. Richard de Parys pleaded joint-tenancy with one not named in the writ, and upon the denial of the plaintiff that the latter had anything in the tenements on the day of the purchase of the writ, process issued according to the Statute. The plaintiff subsequently admitted the joint-tenancy and took nothing by his assise.

[2] L., bref assise.

[3] The words de novele disseisine are not in 25184.

[4] L., R.

[5] L., Maunde.

[6] se is not in L.

[7] 25184, Stipenhith.

[8] L., Stipenhith.

[9] L., dust.

[10] L., durra.

[11] The words le plee are not in L.

A.D. 1340. fore it seems in this case, when I have a deed in hand which proves the joint-tenancy, that the plea ought to avail me, and that being found would abate the whole writ. —SCHARDELOWE. According to the Statute [1] there shall not be process except on the plea of him who is tenant; now you have shown that Thomas, who does not appear, is tenant as well as you; wherefore, &c. And if your plea were allowed you, and the exception were found false, you would incur the penalty provided by the Statute; and it would not be reasonable that T., who is not a party to this exception, should incur that penalty. —*W. Thorpe.* Sir, your first statement proves for me that every joint tenant is tenant of the entirety, inasmuch as otherwise the Statute would not take effect. And, Sir, as to the second point, if a writ be brought against one, and he allege joint-tenancy with two, and one of those two come by process upon the Statute, and avow the exception, and will maintain it, and the other come and disavow it, and the exception be found false upon inquest had, the two [who maintained the exception] will incur the penalty, and the third will be free from it; so also it may be in this case; wherefore, &c.—See some like matter in Easter term in the eighth year, in the assise of Beverley [2].—On the morrow WILLOUGHBY said:—Will you say anything else in order to have this assise?—*Stouford.* This W. de D., who is not named in the writ, has nothing; ready, &c.— *R. Thorpe.* You must say that Richard is sole tenant, so as to have reference to your writ.—ALDEBURGH: You have yourself deprived him of that averment by your plea, for you have yourself admitted that you are not sole tenant; wherefore, &c.—*W. Thorpe.* We pray process according to the Statute.—And this was granted him.—And note:—in this plea SCHARDELOWE said that

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[1] 34 Ed. I. (*Stat. de conjunctim feoffatis*).

[2] Y. B., 8 E. 3, p. 18, Easter Term, No. 1.

il semble en ceo cas, quant jay fait en poigne[1] qe A.D. 1340.
prove la joyntenance, qe le plee moi deit[2] valer, et cella trove abatereit tot le bref.—SCHARD. Par lestatut proces[3] ne serra mye mes par plee celuy qest tenant; ore avez moustre qe Thomas, qe[4] ne vyent mye, est[5] auxi avant tenant com vous; par quei, &c. Et si vostre plee vous fust alowe, et lexcepcion fut trove faux, vous averez le penance del estatut; et il ne serroit mye reson qe T., qe nest mye partie a ceo, eust[6] cele penance.—*W. Thorpe.* Sire, vostre primer dit[7] prove pur moy qe chesqun joyntenant[8] est tenant de lentere, ou autrement lestatut ne tient pas lieu.[9] Et,[10] Sire, al seconde poynt, si bref soit porte vers un, et il allegge joyntenance ove deux, et par proces sour lestatut lun vient et avowe lexcepcion et la voit mayntener, lautre vient et la desavowe, et trove soit lexcepcion faux auxi com serra enquis, lez deux encurreront la penance, et le terce est assoutz; auxi put il estre yci; par quei, &c.—*Vide de tali materia, Paschæ octavo,* en assise de Beverley.—Alendemeyn WILUBY. Voletz autre chose dire daver ceste assise. —*Stouff.* Celuy W. de D., qe nest pas nome en le bref, nad rienz[11]; prest, &c.—*R. Thorpe.* Il covent qe vous deiez soul tenant, issint referrer a vostre bref.—ALD. Vous mesmes par vostre plee luy avetz tollet[12] cest averement, qar vous avetz mesmes conu qe vous nestes pas soul tenant; par quei, &c.—*W. Thorpe.* Nous prioms proces solon lestatut.—Et ceo luy fut grante.—*Et nota* :—en ceo plee SCHAR. dit qun dissei-

[1] L., poynge.
[2] L., dit.
[3] proces is not in L.
[4] L., T., instead of Thomas qe.
[5] L., qest.
[6] L., ust.
[7] L., plee.
[8] L., joyntenance.
[9] 25184, de lieu.
[10] Et is not in L.
[11] rienz is not in L.
[12] L., tolle.

A.D. 1340. a disseisor could not plead misnomer of a vill nor mistake in a name unless it be a mistake in his own name.—*Thorpe* said that he could.—Therefore *quære* as to this.

Assise of Novel Disseisin. § Novel disseisin which John Inge brought against R. Parys and his wife and others. All except R. pleaded by bailiff the misnomer of a vill.—This exception was not allowed.—R. in his own person said that he held by charter jointly with one who was named and with another who was not named in the writ; judgment of the writ.—*Derworthy.* He can not plead without his joint feoffee who has pleaded to the assise; wherefore, &c.—Willoughby. You plead joint-tenancy of another's freehold.—*Thorpe.* If I had a plea in bar, I should plead as to a moiety, and for the same reason as to the entirety in abatement of the writ. And for R.'s wife he said that she had nothing.—*Derworthy* said, *gratis*, that they were tenants, so that the other had nothing; ready, &c.—And the other side said the contrary.—And process by Statute[1] will be had.

Fine. (33.) § Fine.—*Kelshulle* would have rendered part for term of life and part in fee tail. And it was said that the render should be all in one, and that by the *habendum et tenendum* he could sever the parcels. And he did so.

Præcipe quod reddat. (34.) In a *Præcipe quod reddat* the tenant vouched to warranty Edmund Baccoun and T. de C., and said on his voucher that he held for term of life by their lease. *Rokell.* Those whom you vouch never had anything, &c., since the seisin, &c.—*R. Thorpe.* That is not a counterplea, if you do not say that neither they nor their ancestors had, &c., for those are the words of the Statute.[2]—*Rokell.* You have yourself given me the averment, for you have mentioned a special cause for having this voucher, which cause we have traversed and

[1] 34 Ed. I. (*Stat. de conjunctim feoffatis*).

[2] 3 Ed. I. (Westm. 1), c. 40.

sour ne put[1] mye pleder a mesnomer[2] de ville ne a mesprisioun de noun sil ne soit a mesprision de son noun demene.—*Thorpe* dist qe si.—*Ideo*[3] *quære de hoc.*[4] A.D. 1340.

§ Novele[5] disseisine qe Johan Inge porta vers R. Parys et sa femme et autres. Touz plederent par baillif, sauf R., a mesnomer de ville.—*Non allocatur.*—R. en propre persone dit qil tient joint par chartre ove une qe est nome et un autre nient nome el bref; jugement du bref.—*Derworth.* Il ne poet pledre sanz son joint feffe qad plede al assise; par quei, &c. Wilby. Vous pledes la jointenance dautri franc tenement.—*Thorpe.* Si jeo usse plee en barre, jeo pledray de la moite, et par mesme la resoun de lentier al abatement du bref. Et pur sa femme il dit qele nad rien.—*Derworth* dit *gratis* qil furent tenantz issi qe lautre navoit rien; prest, &c.—*Et alii e contra.*—Et proces de Statut se fra, &c. Assisa Novæ Disseisinæ.

(33.)[6] § Fyne.—*Kels.* voleit aver rendu partie a terme de vie et partie en fee taille. Et fust dit qe le[7] rendre serreit tout un, et par laver et tenir il purreit severer les parceles. *Et ita fecit.* Finis. [Fitz. *Fynes*, 59.]

(34.)[8] En un[9] *Prœcipe quod reddat* le tenant voucha a garrant Edmound Baccoun et T. de C., et dit sour son voucher qil tient a terme de vie de lour lees.—*Rokel.* Ceux quex vous vouchez navoient unqes rien, &c., pus la seisine, &c.—*R. Thorpe.* Ceo nest mye contreplee si vous ne diez qe eux ne lour auncestres navoient,[10] &c., qar issint parle lestatut.—*Rok.*[11] Vous mesmes moy[12] avez done laverrement, qar vous avez dit cause especiale daver ceo voucher, quele cause nous avoms traverse et destruit;[13] par quei, &c.—*W.* Prœcipe quod reddat. [Fitz. *Counterple de Voucher*, 68.]

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[1] 21584, purra.
[2] L., mesprisioun.
[3] *Ideo* is not in L.
[4] The words *de hoc* are not in L.
[5] This report of the case is from T. alone.
[6] From T. and Harl. 741.
[7] Harl., qil len, instead of qe le.
[8] From L. and 25184, as far as the point at which the larger type ends.
[9] L., un homme, instead of en un.
[10] navoient is not in 25184.
[11] L., *W. Thorpe.*
[12] 25184, me.
[13] L., destrut.

A.D. 1340. destroyed; wherefore, &c.—*W. Thorpe.* That cause shown is not the substance of our voucher, for when the vouchees come into Court we can bind them by another cause, and the cause we have assigned shall not come upon the roll. Wherefore, since your counterplea is not warranted either by common law or by special law, we demand judgment and pray our voucher.—*Rokell, gratis.* We say that neither they nor their ancestors, as above. —*W. Thorpe.* This averment is not admissible, for inconvenience might result from it, because, if the averment be accepted, it may, perhaps, be found that the ancestor of one was seised, and the ancestor of the other not, and that verdict will, perhaps, be faulty; and we understand that the counterplea is to be admitted only where one alone is vouched.—HILLARY. You understand the Statute ill, for the counterplea is good though twenty were vouched.—ALDEBURGH, *ad idem.* If two parceners were vouched the counterplea would be good, and we cannot know whether they are vouched as parceners or in some other manner; wherefore will you accept the averment?—And afterwards *W. Thorpe* pleaded, in bar of the action, a deed of one who was heir of the assignee of the demandant's ancestor, which deed was denied.—And note, the writ was in this form: —Command, &c., which J. de T. gave to R. de E. and W. de S. and A. his wife, and the heirs issuing from the bodies of the same W. and A., and which after the death of the aforesaid R., and W. and A., ought to descend, &c. —And exception was taken to the writ, and afterwards it was adjudged good, &c.

Voucher. § Voucher of two persons as on their own lease for term of life.—*Rokell.* Those whom you vouch never had anything.—

Thorpe. Cele[1] cause moustre nest mye la substaunce A.D. 1340.
de nostre voucher, qar quant ils vendront[2] en Court nous lez pooms lier par autre cause, et nostre cause ne vendra mye en roule. Par quei, del houre qe vostre contreplee nest pas garrantie ne[3] par comune ley ne par ley especiale, nous demandoms jugement et prioms nostre voucher.—*Rokel,* de gree. Nous dioms qe eux ne lour auncestres, *ut supra.*—*W. Thorpe.* Cest averement nest my resceyvable, qar de ceo[4] put ensuer inconvenience, qar par cas trove serra, si laverement[5] soit pris, qe launcestre lun fuit seisi et lautre ne mye, et cel verdit serra par cas vicious;[6] et nous entendoms qe[7] le contreple ne serra mye resceu mes la ou un est vouche.—HILL. Vous entendez malement lestatut, qar le[8] contreplee est bon mesqe xx. furent vouches.—ALD. *ad idem.* Si deux parceners furent vouches le contreplee est boun, et nous ne pooms salver sil soient vouches com parceneres ou en autre manere;[9] par quei voillez laverement?—Et puis *W. Thorpe* pleda, en barre daccion, celuy qe fuit heire de assigne launcestre le demandant par fait qe fuit dedit.—*Et nota,* le bref fuit tiel:—"Præcipe, &c., quam J. de T. dedit R. de E. " et W. de S. et A. uxori ejus, et heredibus de cor- " poribus eorundem[10] W. et A. exeuntibus, et quæ post " mortem prædictorum R. et W. et A. descendere,"[11] &c. —Et le bref fuit challenge, et pus[12] agarde boun, &c.

§ Voucher[13] de deux come de lour lees demene a terme de vie.—*Rokel.*[14] Ses[15] qe vous vouchez navoint[16] unqes rien.— Voucher.

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[1] Cele is not in L.
[2] 25184, il vendra, instead of ils vendront.
[3] ne is not in L.
[4] L., se.
[5] 25184, lavowere.
[6] 25184, aweirous.
[7] qe is not in L.
[8] le is not in L.
[9] manere is not in L.
[10] 25184, ipsorum.
[11] descendere is not in L.
[12] pus is not in L.
[13] This report of the case is from T. and Harl. 741.
[14] Harl., *Kels.*
[15] Harl., celi.
[16] Harl., navoit.

A.D. 1340. And it was said that this counterplea was good without mentioning their ancestor, because the tenant vouched on account of their own seisin; for if one vouches as assignee, it is a good plea to say that the person whose assignee he makes himself never had anything.—Afterwards *Rokell* said, *gratis*, that neither they nor their ancestors ever had anything.—*Thorpe.* You cannot say that, for you heretofore brought a writ against them as tenants, on which you appeared. — This exception was not allowed.—Wherefore *Thorpe* waived his voucher and pleaded in chief.

Trespass. (35.) § Trespass, for the Abbot of Furness, brought against Robert de Radeclyf, Sheriff of Lancaster. And he counted that his predecessors for some time had a franchise such that no one should meddle on the King's behalf, except themselves, within their lands of Furness, and afterwards his predecessor, in an Eyre, lost their franchise[1] as against King Henry, which King gave the county and sheriffwick of Lancaster to his son Edmund, &c.; and then he counted how Henry Earl of Lancaster, son and heir of Edmund,[2] gave, by the King's license, to the Abbot who now brings this writ the Sheriff's Turn and whatever belongs to the Turn, that is to say, presentments of bloodshed and of all resiants within his lands of Furness, rendering half a mark by the year. And he said that the Sheriff had distrained his men of Furness to present matters which were presentable at the Court of the Sheriff's County, so that the Abbot could not have his Turn. Whereupon he sued a writ to the Sheriff that the latter should not meddle within his liberty, and should appear before the King on a certain day. And the Sheriff did not cease on account of that writ from distraining as before, in contempt of the King and to the damage, &c.—*Pole.* He supposes a contempt in that the Sheriff did nothing on the King's command, and also in that he did not return any writ into the King's Bench, which matter cannot be tried in

[1] Upon a *Quo Warranto*, as appears in the record.

[2] Henry was son, but not heir of Edmund. He was heir of his elder brother Thomas, who died without issue, and is so described in the Great Rolls of the Exchequer.

Et fust dit qe ceo contreplee fust bon sanz parler de lour auncestre, pur ceo qil voucha par cause[1] de lour seisine demene; qar si un vouche come assigne, il est bon plee[2] a dire qe celui qi assigne il se fait navoit unqes rien.—Puis *Rokel gratis*[3] dit qe eux[4] ne lour auncestres navoint unqes rien.—*Thorpe.* Vous ne poez ceo dire, qar vous portastes autrefoitz bref vers eux com tenantz, a quel vous aparustes.—*Non allocatur.*—Par quei il weyva son voucher et pleda en chief. A.D. 1340.

(35.)[5] § *Transgressio,* pur labbe de Fourneys, porte vers Robert de Radeclif, Vicounte de Lancastre. Et conta qe ses predecessours en ascun temps avoint tiel fraunchise qe nul homme se mellereit de par le Roi, forsqe eux, deinz lour terres de Forneys, et puis son predecessour en un eyr perdy lour fraunchise vers le Roi H., le quel Roi dona le counte et vicounte de Lancastre a E. son fitz, &c., et puis coment H. Count de Lancastre, fitz et heir E., dona, par conge du Roi, al Abbe qore porte ceo bref tourn de Vicounte et qanqe a tourn apent, saver saunk espandu et de touz les resceauntz deinz ses terres de Fourneys, rendant demi marc par an. Et dit qe le Vicounte ad destreint ses gentz de Fourneys de presenter chose presentable a son counte, issi qe Labbe ne poet aver son tourn. Sur quei il suyst bref a lui qil ne se mellast deinz sa fraunchise, et qil fust devant le Roi a certein jour. Et pur cel bref il ne lessa qil ne fist destresse come avant, en contempt du Roi et damage, &c. — *Pole.* Il suppose un contempt de ceo qil fist rien pur mandement le Roi, et auxi de ceo qil retourna nul bref en Bank le Roi, quele chose ne poet ceinz estre trie; et Transgressio.

[1] Harl., cas.

[2] In Harl. the word com is inserted after plee.

[3] Harl., quant il.

[4] T., ceux.

[5] From T. alone, until otherwise stated, but compared with the record *Placita de Banco,* Michaelmas, 14 Edward III., R°. 153–154.

A.D. 1340. this Court; and he might have sued this writ there [in the Court of King's Bench]; judgment. — *W. Thorpe.* This contempt is mentioned only as aggravation of the tort, but our action is for that you have distrained our tenants: and in the King's Bench there is nothing of this on record since a writ was not served.—*Pole.* He does not show any cause why he could not have had what belongs to him; and as to the distress of which he speaks, that tort was committed on his tenants; judgment.—*Thorpe.* If you distrain my tenants for rent which is due to me, shall I not have an assise against you? And yet I may distrain them if I please.—And the writ was held good as to that point.— *Pole.* Judgment of the writ, which makes us Sheriff, whereas we are Under-Sheriff.—This exception was not allowed, for he serves the Court and makes oath in the Exchequer as Sheriff. — *Pole.* The land of Furness is within the wapentake of Lonsdale, within which wapentake the bailiff has been accustomed to present matters presentable at the County Court from time whereof there is no memory. And he said that King Henry gave to Edmund Earl of Lancaster the County of Lancaster to hold to him and the heirs of his body, and made the descent to Henry, without whom (said he) we cannot be a party, and we pray aid of him.—*Thorpe.*

il poait aver suy illoeqes ceo bref; jugement. — *W.* A.D. 1340.
Thorpe. Ceo contempt nest parle mes dagrever le tort, mes nostre accion est de ceo qe vous avez destreint noz tenantz; et en Bank le Roi rien est de ceo en record quant bref ne fust pas servy. — *Pole.* Il ne moustre pas cause qil ne poait aver eu ceo qe a lui atient; et ceo qil parle de destresse, cel tort est fait a ses tenantz; jugement.—*Thorpe.* Si vous destreinez mes tenantz pur rente quel est due a moi, naveray assise vers vous? Et si puise jeo destreindre les si jeo voille. — Et bref fust agarde bon a ceo point. — *Pole.* Jugement du bref qe nous fait Vicounte, ou nous sumes Soutz-Vicounte. — *Non allocatur*, qar il sert a la Court et fait le serment al Eschequer come Vicounte. —*Pole.* La terre de Fourneys est deinz la Wapyntake de Lonesdale, deinz quel Wapentake baillif ad use de presenter chose presentable en counte de temps dount memorie nest. Et dit qe le Roi H. dona a E. Count de Lancastre le counte de Lancastre a lui et ses heirs de son corps, et fist la descente a H., saunz qui nous ne pooms estre partie, et prioms eide de lui.[1]—*Thorpe.*

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[1] Robert de Radeclyf's plea, which is not very clearly brought out in either of the reports, was, according to the record, as follows. He said: — "Dominus Henricus, "quondam Rex Angliæ, proavus "domini Regis nunc, fuit seisitus "de toto Comitatu Lancastriæ et "fecit Vicecomites in eodem Comi- "tatu pro voluntate sua, ante quod "tempus nullus Turnus Vice- "comitis tenebatur in eodem Comi- "tatu infra terram de Fourneys "nec alibi. Et dicit quod tunc, et "semper ante a tempore quo non "extat memoria, ballivi Wapen- "tachiorum Comitatus prædicti et "eorum sub-ballivi in Comitatu "præsentarunt effusionem sangui- "nis, et Vicecomites executionem "inde fecerunt. Et dicit quod "quidam Edwardus de Neville "dominus de Kellet est ballivus de "Lonesdale in feodo, infra quam "ballivam terra de Fourneys est. "Et dicit quod tempore prædicti "Regis Henrici, et post, et simi- "liter ante, a tempore quo non "extat memoria, ballivi de Lones- "dale qui pro tempore fuerunt "venerunt ad Comitatum Lancas- "triæ et ibidem præsentaverunt "effusionem sanguinis quæ emer- "gebat infra ballivam prædictam "tam in terra de Fourneys quam "alibi." He also said that Henry III. gave the county of Lancaster with the office of Sheriff to Edmund

A.D. 1340. First of all you must plead to an issue to which you cannot be a party, and that you have not done; for, if he were summoned and did not come, you would not plead then. — *Pole.* In a manner I have pleaded; and if the matter alleged be done it is in right of him who is Sheriff in fee.—*Thorpe.* He justifies the act in right of the Earl whose right is extinguished by his deed; judgment. — And by assent of the party the COURT granted the aid; and in the roll it is entered "that to this writ he cannot answer, &c."

Contempt. § The Abbot of Furness brought his writ against Robert de Radeclyf, Sheriff of Lancaster, and counted, by *W. Thorpe,* that, whereas King Henry by divers his charters had granted to the Abbot of Furness, the present Abbot's predecessor, and his successors, &c., to have the Sheriff's Turn within the land of Furness, so that neither the Sheriff nor any other officer of the King should intermeddle within the same land, yet the said Robert, &c., on such a day, &c., entered the land of Furness, and there held his Turn, and caused certain people of the same liberty (and he said who they were) to present matters presentable at the Sheriff's Turn, and they presented blood-shed (and he said by whom shed), whereupon the said Robert distrained the persons against whom the presentment was made to come to his Turn in the County of Lancaster, and there make a fine, until they did come and make a fine to him, each

Il covient primes qe vous pledes a issu a quei vous ne purrez estre partie, et ceo navez vous pas fait ; qar sil fust somons et ne venist pas vous pledres pas adonqes.—*Pole.* En manere jay plede ; et si tiel chose soit fait cest en le dreit celui qest Vicounte de fee.—*Thorpe.* Il justifie le fet en le dreit le Count qi dreit par son fet est esteint ; jugement.—Et par assent de la partie COURT graunta leide ; et en rolle est entre *quod ad istud breve non potest respondere, &c.* A.D. 1340.

§ Labbe[1] de Forneaux[2] porta son bref vers Robert de Radeclyf,[3] Vicounte de Lancastre, et counta, par *W. Thorpe*, qe, com le Roi Henre par sez divers chartres avoit grante al Abbe de F., predecessour &c. et sez successours &c. davoir tourn de Vicounte deinz la terre de Forneux,[4] issint qe le Vicounte ne nul autre ministre le Roy deinz la dite[5] terre ne sentremellereit, par la le dit R.[6] &c., tiel jour, &c., entra la terre de F., et illoqes teynt soun tourn, et fist certeins gens de mesme la franchise (et dit quex) presenter chose presentable[7] a tourn de Vicounte, les quex presenterent sank espaundu (et dit par quex), par quei le dit Robert[6] destreignit mesmes ceux sour quex le presentement fut fait de venir a son tourn en le Conte de Launcastre, et illoqes faire fyn, tant qils vyndrent et firent fyn a luy, chesqun de ceux pur Contempte

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his son, and traced the descent to Henry, Earl of Lancaster, who, he said, was Sheriff in fee, and whose Undersheriff he was ; and he said that the sub-bailiffs of Edward de Neville presented " effusionem " sanguinis " and that he did execution according to custom. And he prayed aid of Henry, Earl of Lancaster, the Sheriff.

[1] This report of the case is from L. and 25184.

[2] 25184, Forneux.

[3] L. and 25184, Rateclif.

[4] The words de Forneux are not in L.

[5] dite is not in L.

[6] L., Roi.

[7] The words chose presentable are not in L.

A.D. 1340. of them to the amount of 10*s.* And *Thorpe* said that the Abbot delivered to Robert the King's writ, on such a day, &c., to surcease. He would not surcease. Afterwards, on another day another writ. He would not surcease. And afterwards, on another day a third writ &c., *vel causam, &c.*, and that this same Robert should appear in the King's Bench, on such a day, to answer, &c. And all this was mentioned in the Abbot's writ, and he followed his writ further saying:—thus the said Robert had entered his liberty tortiously and in contempt of the King and of the King's commands, and to the damage of the Abbot himself, &c.—*Pole* defended as to the tort and force, and as to contempt of the King and his commands, &c., and the damage, &c., and said:—Sir, you see clearly how his writ supposes that we ought to answer in the King's Bench, whereas, if we were to answer him now [in this Court] and to be convicted as regards the King, we should be convicted of the contempt when it might be that we had been acquitted of it in the King's Bench; wherefore we do not understand that we shall be put to answer to this.—WILLOUGHBY. This suit is made for the King and for the party also; and it is the King's right to be answered where he pleases, and you can be aided by answer, &c.; wherefore say something else.—*Pole.* We pray that our exception be entered.—WILLOUGHBY. Willingly; it shall be; and answer if you will.—*Pole.* Sir, you see clearly how his writ purports that we have exercised certain compulsion towards his men of the land of Furness, and the subsequent words of the writ are "whereby the same Abbot is unable to hold his Turn," and he has himself supposed that he is himself seised of the Turn, and can hold his Turn when he pleases, and have presentments and everything that belongs to a Turn; so his writ does not prove his ground of action, that is to

x. s. Et dit coment il lyvera a luy bref[1] le Roy a tiel jour, &c., qil soursist. Il soursere ne voleit. Pus a un aultre jour autre bref.[1] Il sourseir ne voleit. Et pus a un autre jour le tercie bref, &c., *vel causam &c.*[2] et qe mesme celuy Robert *sit coram nobis*, &c. a tiel jour, *ubicumque, &c., ad respondendum, &c.* Et son bref fait mencion de tot cesty, et outre il pursuy son bref, &c., issint avoit le dit Robert entre sa franchise a tort et en despit du Roy et de sez maundementz, et as damages mesme celuy Abbe, &c. — *Pole* defendi tort et force, et quant qest en despite le Roy et de sez maundementz, &c., et les damages, &c., et dit, Sire, vous veiez bien coment soun bref suppose qe nous dussoms respoundre devant le Roy, ou, si nous respoundissoms ore a luy et fumes atteynt devers le Roy,[3] nous serroms atteynt del contempte ou put estre qe de ceo nous fumes aquite devant le Roy ; par quei nous entendoms qe a cesti nous ne serroms mye mys a respoundre.—WILUBY. Cesti suyte si est fait pur le Roy et pur[4] la partie auxi ; et au Roy attient il destre respondu la ou luy plest, et vous poiez estre eide par respons, &c. ; par quei ditez autre[5] chose.— *Pole.* Nous prioms qe nostre chalenge[6] soit entre. — WILUGBY. Il serra volunters ; et responez si vous volez. —*Pole.* Sire, vous veiez bien coment[7] son bref voet qe nous avoms fait certein compulsion a sez hommes de la terre de Forneux, et pus le bref voit *quominus idem Abbas tornum suum tenere potest*, et il mesme ad suppose qil est mesme[8] seisi de le tourn, et purra tenir soun tourn[9] quant li plerra, et aver presentements et quant qa tourn appent ; issint son bref ne prove mye saccion, cest a savoir qil ne put soun

A.D. 1340.

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[1] bref is not in L.
[2] The words *vel causam, &c.*, are not in L.
[3] L., luy, instead of le Roy.
[4] L., par.
[5] L., a lautre.
[6] L., dit.
[7] 25184, coment qe.
[8] mesme is not in L.
[9] tourn is not in L.

A.D. 1340. say, that he cannot hold his Turn ; wherefore we demand judgment of this writ. — *R. Thorpe.* If I bring a writ of Trespass against you for that you have disturbed certain people from coming to my market with their merchandise, whereby I am disturbed from holding my market or my fair, the writ is good enough ; so also is this, as it seems to me. — *Pole.* In the case that you have put, I have disturbed you from your profit which you ought to have had, but here I plead to your writ which does not prove that which you have taken for your ground of action, because, for anything that you have supposed to be done by us, your tenants are not estranged from you. — SCHARSHULLE, *ad idem.* If we adjudge this writ good, perhaps, after damage shown by reason that the other party has done what is supposed in the writ, we shall then adjudge damages to him whose writ does not suppose him to be damaged, for the writ purports that he cannot hold his Turn, and it is clear, for anything that has yet been shown, that he can hold it to-morrow, if he will.— *W. Thorpe.* Sir, our writ and our ground of action are that he has entered our liberty and exercised compulsion, as above, " whereby," &c. ; thus we suppose that he has taken that which we ought to have taken, and so we are damaged. And, Sir, we have seen the Lord of Beaumond have an oyer and terminer in a case in which one tortiously took the rent of tenements which he ought to have taken. — SCHARSHULLE. Such a writ is worth little if it have nothing more in the writ. (*Quære* as to this.) But your writ supposes a trespass to be committed against others, in respect of which trespass an action belongs more naturally to them than to you ; wherefore, &c. — *R. Thorpe.* Sir, I shall have a writ of trespass for that you beat my servants, so that I lost

tourn tener ;[1] par quei nous demandoms jugement de cesti bref. — *R. Thorpe.* Si jeo porte bref de trespas devers vous de ceo qe vous avez destourbe certeins gens de venir a mon marche ove lour marchandise, dont jeo suy[2] destourbe de tenir mon marche ou ma faire, le bref est assetz boun ; auxi est cesti, a ceo qe me semble. — *Pole.* En le cas ou vous avez mis, jeo vous ay destourbe de vostre profist quel vous deverez[3] aver eu, mes ici jeo plede a vostre bref quel ne prove mye ceo qe vous avez pris[4] pur accion, qar, pur rien qe vous avez suppose estre fait par nous, vos tenantz ne sont mye estranges de vous.—SCHAR., *ad idem.* Si nous ajuggeoms cesti bref bon, par cas, apres damage par cause de ceo qe lautre ad fait ceo qest suppose par le bref, donqes ajuggeroms nous damages a celuy qi bref ne luy[5] suppose mie estre[6] damage, qar le bref voet qil ne put tenir son tourn, et clere chose est, pur rien qest unqore moustre, qil le purra tenir demayn, sil veot. — *W. Thorpe.* Sire,[7] nostre bref et nostre accion est qil ad entre nostre franchise et fait compulsion, *ut supra, quominus* &c. ; issint supposoms nous qil ad pris cella qe nous deveroms aver pris, issint nous endamage. Et, Sire, nous viesmes le Seignur de Beaumond aver un oyer et terminer en cas ou un prist torsenousement[8] la rente dez tenementz quel il devereit aver pris. — SCHAR. Tiel bref vaut poy sil neit plus[9] en le bref. (*Quære de hoc.*) Mais vostre bref suppose un trespas estre[10] fait a autres, de quei accion attient a eux plus naturelment qe a vous ; par quei, &c. — *R. Thorpe.* Sire, jeo averoy bref de trespas de ceo qe vous batistes mes servauntz, A.D. 1340.

[1] tener is not in L.
[2] suy is not in L.
[3] 25184, ne deverez.
[4] L., pernez, instead of avez pris.
[5] L., nay, instead of ne luy.
[6] L., en.
[7] Sire is not in 25184.
[8] 25184, torsenouse.
[9] L., pus.
[10] estre is not in L.

A.D 1340. their services for a long time, and in that case they shall have an action also. — WILLOUGHBY. If I have a Court Leet and View of Frankpledge in a vill, and you have one also, if you distrain my tenants to come to your Leet or to your View, I shall certainly have recovery against you, and so also shall my tenants have good recovery against you, for the tortious distress. Moreover, I can, nevertheless, hold Court Leet or View of Frank-pledge of my tenants; so also here; wherefore say something else. Besides, if a lord of a liberty have full return of writs, and the Sheriff usurp upon his liberty without sending a precept to the bailiffs of the liberty, and execute office himself, the lord shall have a good recovery against the Sheriff; and in that case, when a precept comes anew on another occasion, he shall have again the use of his liberty; so also it appears in this case; wherefore answer.—*Pole.* Again, judgment of the writ, for we tell you that Henry Earl of Lancaster here is Sheriff of Lancaster, and Robert is his Under-Sheriff removable at his pleasure; and the Abbot has described Robert as Sheriff; judgment, &c.—And, because Robert had made his return as Sheriff, this exception was not allowed. — And afterwards *Pole* said that Henry Earl of Lancaster was Sheriff in fee, and Robert de Radeclyf Under-Sheriff deputed by the Earl, and removable at the Earl's pleasure, and prayed aid of the Earl. — And he had not aid without pleading some plea in right of the said Earl, which Robert de Radeclyf could not himself try, &c. — And afterwards *W. Thorpe* assented to the grant of aid.[1]

[1] The translation given to "&c." is founded upon the previous report of the same case, and the fact that aid was actually granted, as appears in the record. According to the record Henry, Earl of Lancaster, appeared to the aid-prayer, and pleaded to the same effect as Robert de Radeclyf, with the difference that it was the honour of Lancaster which was granted to his ancestor. In the Great Rolls of the Exchequer of the years 13 and 14 Edward III. Henry Earl of Lancaster is described, under the head "*Lancastria*" as "*Vicecomes de feodo*," and Robert de Radeclyf as "*Subvicecomes.*"

issint qe jeo perdi par longe temps lour services, et si averount ils accion auxi.—WILUBY. Si jeo ay lete et vewe de frank plege en une ville, et vous eiez auxi, si vous destreignez mes tenantz de venir a vostre lete ou a vostre vewe, jeo averoi bien recoverir devers vous, [et si averont mes tenance devers vous bon recoverir][1] pur la torcenouse destresse. Ovesqe ceo, [jeo puisse uncore tenir lete ou viewe de mes tenantz; auxi yci; par quei ditez autre chose. Ovesqe ceo][2] si un seignur de un franchise eit pleyn retourn de brefs, et Vicounte usorpe sour sa franchise sanz mander precepte as baillifs de la franchise, et face mesme[3] loffice, le seignour avera boun recoverir vers le Vicounte; et si put il aultre foith quant precepte vendra de novel re-user sa fraunchise; auxi semble il ici; par quei responez. — *Pole.* Unqore jugement de bref, qar nous vous[4] dioms qe Henre Conte de Lancastre si est Vicounte de L., et R. son south Vicounte remuable a sa volunte; et il luy[5] ad nome Vicounte; jugement, &c.—Et,[6] pur ceo qil fait[7] son retourn[8] com Vicounte, *non allocatur.* — Et pus il dit coment Henre Counte de L. fuit Vicounte de fee,[9] et il susvicounte[10] depute par luy et remuable a sa volunte, et pria eide de luy. —*Et non habuit* sanz pleder ascun plee en le dreit le dite Counte quel il mesme ne[11] purra[12] trier, &c.— Et puis *W. Thorpe, &c.*[13] A.D. 1340.

[1] The words between brackets are not in 25184

[2] The words between brackets are not in L.

[3] 25184, com.

[4] vous is not in L.

[5] luy is not in L.

[6] Et is not in L.

[7] L., avoit fait.

[8] 25184, tourn.

[9] L., L.

[10] L., south vicounte.

[11] ne is not in L.

[12] L., porra

[13] There is also an abridgment of this case in Harl. 741.

A.D. 1340. Dower demanded by reason of exchange, as appears in this plea, whereas the woman shall not be endowed of both lands, if the exchange be found, as appears, at common law.

(36.) § A writ of Dower was brought against a tenant, and the demand was for the third part of two parts of the manor of C.—*Blaik.* As to the third part of your demand we vouch to warranty one J.; and as to the residue we tell you that you are seised in dower of tenements taken in exchange from ourselves by your own husband (and he showed in what manner); judgment whether you can have an action, &c. — *W. Thorpe.* Let the voucher stand. And, as to the residue, you speak of exchange which is a matter that lies naturally in specialty, and you were yourself a party, so that the deed ought to remain with you; wherefore the law will not put us to answer to anything that you have said, since you do not show any specialty.— *Pole.* Then you do not deny the seisin which we have alleged. — *W. Thorpe.* We do not plead in respect of that, but as above, for, if husband and wife aliened the right of the wife for other tenements taken in exchange, it would be necessary that the deed of exchange should be shown when the exchange was pleaded against the wife if she brought a *Cui in vita,* for otherwise it could not be understood to be the act of the wife; wherefore, &c. — HILLARY. In the case of which you speak if the tenant could fix upon the wife seisin of and satisfaction by the tenements taken in exchange, that would be sufficient for him to oust her from the action even without showing a deed. — *W. Thorpe.* Our husband was seised of this land simply, without this that there was an exchange; ready, &c. —And *Pole* said the contrary.

A.D. 1340. Dowere demande par cause deschangez, *ut patet in isto placito*, ou la femme serra mie dowe dambedeux terrez, si soit trove, *ut patet*, a la comune ley, &c.

(36.)[1] § Bref[2] de dowere fust[3] porte vers un tenant, et la demande fust de la terce partie de les ij. parties[4] del manere de C.—*Blaik.* Quant a la terce partie de vostre demande nous vouchoms a garrant un J.; et quant al remenant nous vous dioms qe vous estez seisi en dowere des tenementz pris en eschange de nous mesmes par vostre baroun demene (et moustra la manere coment); jugement si accion poiez aver, &c. —*W. Thorpe.* Estoise le voucher. Et, quant al remenant, vous parlez des eschaunges qest[5] chose qe naturelment chiet en especialte, et vous mesmes feustes[6] partie, issint qe le fait vous deit demurrer; par quei a rien qe vous avez dit la ley ne nous mettra a respoundre, del houre qe vous ne moustrez nul especialte. — *Pole.* Donqes vous ne deditez mye la seisine quel nous avoms allegge.[7] — *W. Thorpe.* Nous ne pledoms mye la en dreit, mes *ut supra*, qar, si baroun et sa femme alienerent le[8] dreit la[9] femme pur aultres tenementz en eschange, il covient qe cele fait soit moustre quant les eschaunges serront pledez devers la femme si ele porte un[10] *Cui in vita*, qar aultrement il ne put estre entendu le fait la feme; par quei,[11] &c. HILL. En le cas qe[12] vous parlez sil purra attacher sour la feme seisine et agrement des tenementz pris en eschange, assetz luy suffit de la ouster daccion tot saunz fait moustrer. — *W. Thorpe.* Nostre baroun fut seisi de ceste[13] terre &c. simplement, sanz ceo qil iavoit eschange; prest, &c.— Et *Pole e contra, &c.*

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[1] From L., and 25184, as far as the point at which the larger type ends.

[2] L., En un bref.

[3] L., qe fust.

[4] In 25184 the words de deux parties are inserted after tho words parties.

[5] L., quel.

[6] L., futestez.

[7] 25184, alleggeoms, instead of avoms allege.

[8] L., en.

[9] 25184, sa.

[10] 25184, son.

[11] The words par quei are not in L.

[12] 25184, ou.

[13] L., deste, instead of de ceste.

A.D. 1340. Dower where exchange was pleaded in bar, to which exception was taken because no deed was produced, and the exception was not allowed. Then the woman said that her husband aliened simply.

§ Dower, where it was pleaded in bar that the demandant had received dower of other tenements for which the tenements in demand passed in exchange; and it was said that an exchange cannot be made without a specialty, of which she showed nothing.--This was not allowed.—*Thorpe.* Our husband aliened simply, without this that he took anything in exchange; ready, &c.—And the other side said the contrary.

Right of advowson.

(37.) § Thomas de Astele, knight, brought a writ of Right of Advowson[1] against the Prior of Arbury. — *W. Thorpe* demanded view.—*Pole.* This is a writ of Right of Advowson, in which case you shall not have view unless you show cause, as by showing that there are several churches in the same vill.—*W. Thorpe.* It is a writ of Right, and common right gives us view, for we cannot know whether there be one church, or two, or any, in the vill, except by view, any more than when a manor is in demand, in which case I shall have view, because there may be two manors in a vill; so also it appears in this case.—*R. Thorpe.* It is old law that view shall not be had upon such a writ as this without cause shown.—*W. Thorpe.* Upon a writ of Right of Advowson of Tithes view shall be had without cause shown;

[1] In respect of the advowson of the church of Hulle Morton, or Hill Moreton (Warwickshire), as appears by the record.

§ Dower,[1] ou plede fust[3] en barre par resceite de dower dautres tenementz pur quex ceux tenementz passerent en eschange; et fust dit qe eschaunge ne poet estre fait[4] saunz especialte, de quei ele ne mostre rien.—*Non allocatur.*[5]—*Thorpe.* Nostre baroun aliena simplement, saunz ceo qil ne prist rien en eschange; prest, &c.—*Et alii e contra.*

A.D. 1340. Dower,[2] ou eschaunges furent plédes en barre, qe fut chalenge de ce qe nul fete fut mis avant. *Et non allocatur.* Puis la feme dit qe sun baron aliena simplement.

(37.)[6] § Thomas de Astele,[7] chivaler,[8] porta un[9] bref de dreit davowesoun vers le Prior de Erbury.[10]— *W. Thorpe* demanda la vewe.—*Pole.* Cest un bref de dreit davowesoun, en quel cas vous naverez mye la vewe si vous ne moustrez cause, com a moustrer qen mesme la ville il y sount plusours eglises.— *W. Thorpe.* Cest un bref de dreit, et comune dreit nous done la vewe, qar nous ne pooms mye conustre si il y eit[11] une eglise, ou deux, ou nul, en la ville, si non[12] par la vewe, nyent plus qe la ou un manere est en demande, en quel cas jeo averay le vewe, qar deux maneres pount estre en un ville; auxi semble il[13] yci.—*R. Thorpe.* Il est auncienne ley qen tiel bref homme navera mye la vewe sanz cause.— *W. Thorpe.* En un bref de dreit davowesoun[14] des dismes homme avera la veuwe sanz

Dreit davowesoun.

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[1] This report of the case is from T. and Harl. 741.

[2] The words in the margin subsequent to "Dower" are not in Harl.

[3] Harl., est.

[4] fait is not in Harl.

[5] The report ends here in Harl.

[6] From L. and 25184, as far as the point at which the larger type ends, but corrected by the record *Placita de Banco*, Mich. 14 Ed. III., R°. 181.

[7] L., Hastelay; 25184, Hastel.

[8] L., chevalier.

[9] L., son.

[10] L., Hertebiri; 25184, Hertbir.

[11] L., ad.

[12] non is not in 25184.

[13] il is not in L.

[14] L., davowere.

A.D. 1340. so also it appears in this case. — *R. Thorpe.* In that case the writ gives him the view; not so in this case. —And afterwards *W. Thorpe* defended, &c., and joined the mise, and fully acknowledged the seisin of the demandant's ancestor from whom, &c., and said that he gave and granted the same advowson to the Prior's predecessor, and afterwards released and confirmed, &c. (And he produced both the deeds, &c.)—And note that the mise was accepted.—And note that in this case it was said that if a writ of Right of Advowson is brought in respect of a church in a vill, and there are two churches dedicated to one Saint in the same vill, unless determination be made in the writ as to which church is in demand, the writ will abate, &c.[1]

Right, where view was demanded. And I think he will have it if there be two churches in the vill.

§ Right of advowson. View was demanded. And it was said that he should not have view unless there were two churches in the vill. And it was said that if there be two churches, and no diversity be assigned, the writ is not good. Afterwards the mise was joined on the feoffment of one of those in the descent, and also on the release and confirmation by the same ancestor, and it was accepted.

Trespass.

(38.) § Robert, Bishop of Chichester, brought his writ of Trespass in respect of his trees cut (to wit 100 beeches in his wood, &c.), and taken, &c., against one John de

[1] No pleadings as to view appear in the record. Issue was joined on an alleged grant of the church in frank-almoign to the Church and Canons of the Blessed Mary of Arbury by an ancestor of the demandant. Judgment was given for the demandant, as the Prior did not appear on a day given.

cause moustrer; auxi semble il yci.—*R. Thorpe.* La[1] le bref luy doune la veuwe; *non sic hic.*—Et pus *W. Thorpe* defendi, &c., et joynt la myse, et bien conust la seisine launcestre le demandant de qui, &c., le quele douna et granta mesme lavowesoun al predecessour, &c., et pus relessa et conferma, &c. (Et myst[2] avant ambedeux les faitz, &c.)—*Et nota:* la myse fut accepte. —*Et nota:* en ceo cas yci fuit dit qe si homme porte bref de dreit davowesoun dune eglise en un ville et il y sount en mesme la ville deux eglises dun Seynt, si[3] determinacion ne soit fait par le bref[4] quel eglise est demande, le bref abatera, &c. A.D. 1340.

§ Dreit[5] davowesoun.—Vewe demande. Et est dist qil navera pas sil ne furent ij. eglises en la ville. Et fust dit qe si deux eglises y soient et diversite ne soit pas fait, le bref nest pas bon. Puis la myse fust joynt sur feffement dun[6] deux en la descente, et auxi sur relees et confermement de mesme launcestre, et fust resceu.[7] De Recto, ou la vewe fut demande. *Et credo* qe il avera si deux eglises soient en la ville.

(38.)[8] § Robert, Levesqe de Cicestre, porta son bref de trespas de sez arbres coupez, saver c. fouz[9] en soun boys, &c., pris &c., devers un Johan de Avelhurst.[10]— Trespas.

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[1] La is not in L.

[2] 25184, moustra.

[3] L., et si.

[4] The words par le bref are not in L.

[5] This report of the case is from T., and Harl. 741.

[6] Harl., de.

[7] There is also, in addition to the above, another abridgment of this case in Harl. 741.

[8] From L. and 25184, until otherwise stated, but corrected by the record *Placita de Banco*, Mich., 14 Ed. III., R°. 205 d. It there appears that the action was brought by Robert, Bishop of Chichester, against John de Avelhurst.

[9] 25184, fuytz.

[10] 25184, Richard de; L., Richard de B., instead of John de Avelhurst.

A.D. 1340. Avelhurst.—*Blaik.* John tells you[1] as to coming with force, &c., and as to cutting growing trees, that he is Not Guilty. But as to eight beech trees he tells you that he has a house and a bovate of land in Wysbergh within which vill the wood aforesaid extends, and this John has a profit in the same wood such that, if any tree there be thrown down either by the wind or in any other manner whatsoever, he shall have the branches and outgrowth as far as the trunk of the tree, which in that place is called "Twyshewencartfelghe," if so be that the said John can first seize them before any other tenant of the same vill who has a like profit in the same manner; and of this profit this same John, and his ancestors, and the ter-tenants have been seised, from time whereof memory does not run, as appurtenant to the freehold aforesaid; and because the eight beeches were thrown down by the wind the said John came peaceably and took the branches and the outgrowth, as it was fully lawful for him to do; and (said *Blaik*) we demand judgment whether, in respect of this, you can assign tort in his person.—*W. Thorpe.* Sir, you see

[1] According to the record John's plea was as follows: — That the bishop has a wood within his manor of Aumberle (Amberley in Sussex) which is called "Menesse," and extends to Wysbergh and Fitelworth, and that John has common in the wood (by reason of his freehold in Wysbergh) for all his cattle (*averiis*) "et etiam quod-" dam proficuum capiendum in " eodem, videlicet quando aliqua " arbor prostrata fuerit in eodem " bosco per ventum vel per præ-" dictum Episcopum, aut aliquem " de suis, seu quocunque alio modo, " bene liceat ipsi Johanni ramos et " croppum inde usque ad grossum " ejusdem arboris quod vocatur " 'Twyshewencartfelghe,' si venerit " antequam aliquis alius qui habet " tale proficuum in eodem bosco, " amputare et asportare pro volun-" tate sua sine visu forestarii, de " quo quidem proficuo capiendo " in forma prædicta ipse et om-" nes antecessores sui et illi qui " tenuerunt prædicta tenementa " quæ ipse tenet a tempore quo " non extat memoria seisiti fuerunt " tanquam pertinente ad liberum " tenementum suum prædictum" —and that he merely took the branches and "croppum" of eight beeches which were "prostratæ" in the wood. Issue was joined thereon.

Blaik. Johan[1] vous dit[2] quant[3] al venire a force, &c., et quant al couper des arbres cressauntz, de rien coupable. Mes quant a viij. foutz[4] il vous dit qil ad[5] un mies[6] et une bovee de terre en Wysbergh[7] deinz quelle ville lavantdit boys sestend, le quel Johan[15] ad un tiel profit en mesme le boys qe si nul arbre[8] soit illoqes[9] abatu ou par vent ou par autre manere quecunqe qil avera les braunches et les[10] croppes,[11] tant qal grossure[12] del arbre, qest illoqes appelle "Twyshewencartfelghe,"[13] si[14] issint soit qe le dit Johan[15] les purra primes happer devant nul autre tenant de mesme la ville qe atiel profist ad par mesme la manere, de quel profist mesme cesti Johan,[15] et sez auncestres, et lez terre tenanz ount este seisiz, de[16] temps dount memoire[17] ne court, com appurtenant al franktenement avant dit; et pur ceo qe les viij. fouez[4] furent abatuz par vent le dit Johan[15] veynt en[18] la pees et prist les braunches et les cropes[19] come bien lui[20] lust;[21] et demandoms jugement si tort en sa persone, en dreit de ceo, poiez assigner. — *W. Thorpe.* A.D. 1340.

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[1] 25184, Richard.

[2] L., Vous ditez, instead of Johan vous dit.

[3] L., qe.

[4] 25184, fuytz.

[5] L., vous ad.

[6] L., meis.

[7] L., and 25184, B.; the name is from the record.

[8] arbre and arbres are spelled in L., respectively arbree and arbrees.

[9] illoqes is not in 25184.

[10] The words et les are not in L.

[11] 25184, croups.

[12] 25184, grossour.

[13] This word or combination of words is from the record. In L. it appears as twyele wenkart seleghes, and in 25184 as Twyshewenkart seleghes.

[14] L., sil.

[15] L., and 25184, Richard.

[16] 25184, puis.

[17] L., memore.

[18] 25184, ove.

[19] 25184, croupes.

[20] lui is not in L.

[21] 25114, luist.

A.D. 1340. clearly how he claims this profit as appurtenant as being in the nature of reasonable estovers, whereas he has himself shown that what he is to have shall come to him by man's will or by windfall. Besides, he has attributed the right to others as well as to himself, if another can seize it, and this cannot in law be called appurtenant. Wherefore no law shall put us to answer to anything that he has said.—*Blaik.* Then is it as we have said?—SCHARSHULLE. That does not require an answer, for when you claim this profit as in the nature of reasonable estovers you ought to show that it can be so, but you have not claimed it as for firewood, or for building, or for enclosing, in which case reasonable estovers appendant to this land would of their nature be consumed on the freehold itself to which they are appendant, just as beasts which till land shall feed in the place where one has common appendant to the particular land, but according to your claim you can sell or aliene the wood, and so it cannot in law be said to be appendant to the freehold; wherefore, &c.—WILLOUGHBY. He has alleged prescription, which may give appendancy contrary to common right, for in a *Quo warranto* we have seen a lord of a vill claim by prescription one penny for every cart that passed through the vill, and that claim is contrary to common right, and so in this case; besides, I saw in an assise of turbary a similar plaint held good

Sire, vous veiez bien coment il cleyme ceste chose [1] com appurtenant auxi com en nature de renable estovers, ou il ad mesme moustre qe ceo qil avera luy avendra par volunte de homme ou par cheanse [2] de vent. Ovesqe ceo, il ad done le dreit a autre auxi bien com a luy, si [3] lautre le [4] purra happer, quele chose ne put en ley [5] estre dit appurtenant. Par quei a rien qil ad dit nul ley ne nous mettra a respoundre. —*Blaik.* Donqes est il issint com nous avoms dit?— SCHAR. Ceo [6] ne bosoigne mye, qar quant vous clamez cesty chose com en nature de renable estovers vous devez [7] moustrer [8] qil put [9] issint estre, mes vous ne lavez mye clame com dardre,[10] ne de edifier, ne denclore, oue [11] renables estovers appendant a cele terre [12] de lour nature serroint [13] despenduz sour mesme le franctenement a quel ils appendent, auxi com bestes qe gaignont terre pestront la oue homme ad [14] comune appendant a [15] cele terre, mes par vostre cleyme vous les poiez vendre ou aliener, issint ne put il de ley estre dit appendant al franctenement; par quei,[16] &c.— WILUGBY. Il ad allegge prescripcion, quel chose put doner appendaunce encontre comune dreit, qar en un *Quo warranto* nous avoms vew un seignur dune ville clamer par prescripcion un dener de chescun [17] charecte [18] qe passereit par my la ville et si est cel [19] clame encountre comune dreit, ausi icy; ovesqe ceo, jeo vy en un assise de turberie une tiele pleinte agarde boun de A.D. 1340.

[1] L., cesty, instead of ceste chose.
[2] 25184, chace.
[3] L., et si.
[4] le is not in L.
[5] L., luy.
[6] Se.
[7] 25184, ne devez; L., avez.
[8] L., moustre.
[9] 25184, pount.
[10] L., de arderre.
[11] oue is not in L.
[12] The words a cele terre are not in 25184.
[13] 25184, serront.
[14] ad is not in 25184.
[15] L., en.
[16] The words par quei are not in L.
[17] L., deschequn, instead of de chescun.
[18] L., charoit; the words du seel are added in 25184.
[19] cel is not in L.

A.D. 1340. as to the common, that is to say to dig, dry, carry, and sell at the pleasure of the plaintiff.—SCHARSHULLE. That would now be an extraordinary plaint. However, it seems to me that they are at issue with regard to this plea, for the defendant has said that as to the cutting he is Not Guilty, and the words of the writ are, "wherefore, &c., he cut down trees lately growing, &c.," which words he has traversed, and that cutting is the ground of the plaintiff's action, and that which the defendant has said as to the branches is nothing to the purpose, for in respect of such branches taken and carried away another action would lie, just as in the case of my corn cut when growing and carried off there lies one manner of action, that is to say an assise or other writ, and in respect of my corn taken and carried off when in shocks or stored in a barn there lies another action; so also in respect of a house pulled down there lies one action, and in respect of timber taken and carried away from my house another action; wherefore, &c.—*Blaik.* Sir, had I pleaded simply Not Guilty, perhaps that would have fallen to my disinheritance in respect of this profit which I have claimed, and for that reason I have justified the act, as above, to which the other side ought to answer, and to that justification he has answered and pleaded with us in law, and so he has departed from his writ; wherefore we demand judgment, and pray that you abate this writ. — SCHARSHULLE. There is no need for him to answer you as to that which you said at first, for it is absolutely necessary that one who is to justify an act should avow the particular act surmised against him, and that you do not do; but that which he surmises — that is to say the cutting of the trees—you have denied, and so traversed his writ. Wherefore you, Plaintiff, will you maintain your writ? — And the Plaintiff said that he would.— Therefore the averment was accepted on the traverse. —*Blaik* prayed that the whole of his plea might be

la[1] comune, &c., saver a fouer, secher, carier, et vendre, A.D. 1340.
a sa volunte.—SCHAR. Ceo serroit ore une mervaillouse pleinte. Mes il semble a moy qils sunt a issue de ceo plee, qar le defendant ad dit qe quant al couper de rien coupable, et le bref voit *quare, &c., arbores nuper crescentes, &c., succidit,* quele paroule il ad traverse, et cest saccion, et ceo qil ad parle de les branches nest rien apurpos, qar de tiele chose pris et emporte girreit autre accion, auxi com de mes blees cressauntz sciez et emportes gist un manere daccion, cest a saver assise ou autre bref, et de mes blees entasse ou engrange pris et emportez gist autre accion ; auxi dune mesoun abatu une accion, et del meyryn de ma mesoun pris ou emportez un aultre accion ; par quei, &c. —*Blaik.* Sire, si jeo pledasse symplement de rien coupable, par cas ceo cherreit en desheritance a moy en dreit de cele profist quel jeo ay clame,[2] et pur ceo ay jeo justifie le fait, *ut supra,* a quei il covent qe lautre respoigne, et a cele justificacion il ad respondu et plede ovesqe nous en ley, issint est il departi de soun bref; par quei nous demandoms jugement, et prioms qe vous abatez cesti bref. — SCHAR. A vostre primer dit il ne[3] bosoigne ja qil respoigne a vous, qar celuy[4] qe dust justifier un fait il coveynt a force qil avowe mesme le fait quel luy est sourmyse, et ceo ne faitez vous pas ; mes ceo qil vous[5] sourmet, saver le couper des arbres, vous lavez dedit, issint traverse son bref. Par quei vous, pleyntif, volez mayntener vostre bref ? qe dit qoil.[6] — Par quei laverrement fut resceu sour le travers.—*Blaik* pria qe tot son dit fuit

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[1] L., sa.
[2] L., jay cleyme, instead of jeo ay clame.
[3] ne is not in 25184.
[4] 25184, cella.
[5] vous is not in 25184.
[6] L., qe ou il.

A.D. 1340. entered on the roll,[1] &c.—And note that what was said to the effect that he departed from his writ when he pleaded to the justification shall not abate the writ, for he took that form of pleading entirely upon the confession of the party himself and pleaded that it was not an answer, as above, &c.

Trespass. § Trespass, which the Bishop of Chichester, then Chancellor, brought in respect of his trees cut and carried away against the peace.—*Blaik.* We tell you that we hold of the Bishop a messuage in B.; and we tell you that all the Bishop's tenants within his manor of B. ought to have of all the trees thrown down by the wind within the same place where he complains, and of those which are cut down by the Bishop, all the branches and the tree as far as the trunk, that is to say so much as is called "twyshewencartfelghe,"[2] and the first comer of his tenants shall have them; and we tell you that we and our ancestors and the ter-tenants from time whereof there is no memory, &c.; and we came and found three trees thrown down by the wind, and we took them, &c., without this that we cut his trees or did anything against the peace; and as to coming with force and arms, and the rest of the trees, Not Guilty. — *Gayneford.* He does not claim as housebote and haybote, which might be appendant; and moreover he claims that whoever of the tenants shall first come, &c., which cannot be claimed by prescription and lies only in man's will; judgment. —*Derworthy.* Then is it so? — *Thorpe.* There is no need to say; and suppose that you were disturbed by the Bishop, you would be without recovery. — WILLOUGHBY. In some cases a man shall have a thing if he can seize it, and shall not have it by action, as in the case of a heriot; and we have seen that one has had a penny for every cart which passed through a vill.—*Thorpe.* True, by reason of pavage or for making

[1] It was so entered, and issue was joined upon it. *See* note 1, p. 106

[2] This is the term used in the record. *See* note 1, p. 106.

entre en roulle, &c.—*Et nota* qe ceo [qe] fuit dit qil departi de soun bref quant il pleda alla justificacion nabatera mye le bref, qar cele paroule si prist il tot de la conisance le partie mesme et pleda qe ceo ne fuit mye respons, *ut supra*, &c. A.D. 1340.

§ *Transgressio*[1] qe Levesqe de Cicestre,[2] adonqes Chaunceler, porta de ses arbres copes et enportes contre la pees.—*Blayk.* Nous vous dioms qe nous tenoms del Evesqe un messuage en B.; et vous dioms qe touz les tenantz Levesqe deinz son manoir de B. deivent aver de touz les arbres abatuz par vent deinz mesme le lieu ou il se pleint, et qe sont copes par Levesqe, totes les braunches et larbre tanqe a la grossure de taunt come apele tuys haggen fellighe, et qi de ses tenantz qe primes vendra lavera; et vous dioms qe nous et noz auncestres et les terres tenantz du temps dont memorie nest, &c.; et nous venimes et trovames iij. arbres abatuz par vent, et primes, &c., sanz ceo qe nous copames ses arbres ou sanz rien faire contre la pees; et qaunt al venir a force et armes et le remenant des arbres de rien copable.[3] — *Gayn.* Il ne cleyme pas come housebot et haybot, et purreit estre apendant; et il cleyme outre qe de tenantz purra primes venir, qe ne poet estre clame par prescripcion qe ne chiet forsqen volunte domme; jugement. — *Derworth.* Donqes est il issi ?—*Thorpe.* Il nest pas mestier; et jeo pose qe vous fussez destourbe par Levesqe, vous serrez saunz recoverir. — WILBY. En cas homme avera chose sil purra happer, et nel avera pas par accion, come de heriete; et nous avoms vewe qe de chescune charette passaunt par my une ville homme ad ew un dener.—*Thorpe.* Cest verite, par cause pur pavage ou Transgressio.

[1] This report of the case is from T. alone.

[2] T., Cestre. *See* above, p. 105, note 8.

[3] T., copes.

A.D. 1340. a causey, but not otherwise; and so it was adjudged in the Northampton Eyre.—WILLOUGHBY. A man made his plaint for common of turbary, to burn the turf in a messuage and to sell it at his pleasure, and this cannot be said to be appendant by prescription, and it was maintained. — SCHARSHULLE. That is not law now. — WILLOUGHBY. One more learned than you are adjudged it. — SCHARSHULLE. Your justification does not go to his writ, for you plead as to the trees thrown down by the wind, and his plaint is as to trees cut.— *Derworthy.* It is necessary to answer as to the carrying away; for if here I traversed the cutting, and the carrying away was found to be without cause, he would recover damages; and the carrying away is avowed for a cause; and if I did not make mention of my profit, I should lose it; and he has pleaded to my justification, waiving his writ; judgment of the writ. — *Thorpe.* Not so; but when you plead by way of justification you take upon yourself to answer to our plaint, and therefore you ought to answer as to the cutting, and that you have not done.—WILLOUGHBY. You are at a traverse; wherefore his plea shall be entered in evidence. — And so it was. — SCHARSHULLE said that, if the trees were thrown down by the wind and carried away, he would have another writ, for this writ gives an action for trees cut by the defendant.

Right. (39.) § Right Patent was removed by Tolt. And the Sheriff in accordance with a writ adjourned the parties into the Bench; and he did not send the patent, but the party himself produced it.

Entry ad communem legem. (40.) § Entry, which Gilbert son of Gilbert de Kyrkeby brought. And it was supposed in the writ that the tenant[1] had not entry but by one Sarah

[1] According to the record, Robert le Ram and Thomas, his son, were tenants.

causee faire, mes autrement nient; et issi fust ajuge en leir de Northamtone. — WILBY. Un homme fist sa pleinte de comune de turbarie, dardre en une messuage et vendre a sa volunte, et ceo ne poet estre dit apendant par prescripcion. Fust meintenu.—SCH. Ceo nest pas ley a ore. — WILBY. Pluis sage qe vous nestes lajugea. — SCH. Vostre justificacion ne va pas a son bref, qar vous pledes as arbres abatuz par vent, et sa pleinte est des arbres copes. — *Derworth.* Il covient respondre al enportier; qar si icy traversay le coper, et trove fust lenportier sanz cause, il recovera damages; et lenportier y avowe par cause; et si jeo ne feise mencion de mon profist, jeo le perdroy; et il ad plede a ma justificacion, weyvant son bref; jugement du bref.—*Thorpe.* Nanyl; mes qant vous pledes a justificacion vous enpernez de respondre a nostre pleinte, et par tant vous devez respondre al coper, et ceo ne feistes vous pas. — WILBY. Vous estes a travers; par quei son plee serra entre en evidence.—*Et sic fuit.*— SCH. dit qe, si les arbres furent abatus par vent et enportez, il avera autre bref, qar ceo bref doune accion as arbres copes par le defendant.[1] A.D. 1340.

(39.)[2] § Dreit patent remue par toud. Et le Vicounte par bref[3] ajourna les parties en Baunk; et ne manda pas la patente, mes la partie meisme la myst avant. De Recto.

(40.)[4] § Entre, qe Gilbert fils Gilbert de Kyrkeby[5] porta, et supposa qe le tenant nad entre si noun par Entre ad communem legem.

[1] There is also an abridgment of this case in Harl. 741.

[2] From T., and Harl. 741.

[3] The words par bref are not in Harl.

[4] From T., and Harl. 741, but corrected by the record *Placita de Banco*, Mich., 14 Ed. III., R°. 323 d. There is also a second report in Harl. 741, in which the names are set forth, but they are best given in the record.

[5] T., J.; Harl., un, instead of Gilbert fils Gilbert de Kyrkeby. This and the rest of the names, throughout the report, are from the record.

A.D. 1340. who was the wife of Gilbert de Kyrkeby, who held these tenements by a lease made to Sarah and her husband and the heirs of her husband, and which, after the death of Sarah, ought to revert to him as son and heir of the husband.—*Lincoln.* Judgment of the writ; for by the common law this writ is given only when a tenant alienes his estate, and, when he alienes in fee, a writ of Entry *in consimili casu* is given by Statute[1] in his lifetime; and this writ does not determine that with certainty, &c. — WILLOUGHBY. By the common law, if a tenant for term of life aliene in fee, a writ is given after his death, and by Statute it is given during his life and not afterwards.—Wherefore he adjudged the writ to be good.

Quid juris clamat.

(41.) § In a *Quid juris clamat* brought against four persons three appeared, and as to the fourth the Sheriff returned that he had nothing. — *Pole* prayed, because the writ was sued against the four in common (in which case the writ of *Distringas* shall run against them in common), that as to the fourth the Sheriff might be amerced, and that the issues of the other three might be forfeited. — SCHARDELOWE. They have saved their issues, as returned upon them, by their appearance. — *W. Thorpe.* Sir, the appearance of the three cannot be the appearance of the four, and, if they do not all come, where according to law they are to be distrained in common, they shall lose their issues, just as, in the case of jurors, against whom the *Distringas juratores* has issued, the issues of those who come are lost as well as the issues of those who do not come; so also it was at common law with respect to the petty jury in a writ of Attaint, though now

[1] *i.e.*, by the Statute 13 Ed. I. (Westm. 2), c. 24, as applied to the writ *in casu proviso* given by 6 Ed. I. (Stat. Glouc.), c. 7.

une Sara qe fut la femme Gilbert de Kyrkeby,[1] qe ces tenementz tient par un lees fait a Sara[2] et son baroun et les heirs son baroun, et les queux, apres la mort Sara,[2] a lui come a fitz et heir le baroun revertir deivent. — *Linc.* Jugement du bref; qar par comune ley ceo bref nest pas done mes qant tenant aliene son estat, et, quant il aliene en fee, par estatut est done entre *in consimili casu* en sa vie;[3] et ceo bref ne determine le[4] pas en certein, &c.—WILBY. Par comune ley, si tenant a terme de vie aliene en fee, bref est done apres sa mort, et[5] par estatut en sa vie et noun[6] pas apres.—Par quei il agarda le brief bon. A.D. 1340 [Fitz. *Briefe*, 283.]

(41.)[7] § En un *Quid juris clamat* porte vers iiij. les iij. viendrent, et quant al qarte[8] le Vicounte retourna qil navoit rienz. — *Pole* pria, pur ceo qe le bref fuit siwy vers eux iiij. en comune, en quel cas la destresse curra en comune, qe quant a le quarte[9] qe le Vicounte fut amercie, et qe les issues des autres iij. furent forfaitz.—SCHARD. Ils ount salve lour issues retournez sour eux par lour apparaunce.—*W. Thorpe.* Sire, lapparaunce de les iij. ne put estre lapparaunce de iiij., et si touz ne[10] viegnent, la ou de ley il serrount destreints en comune, il perdront lour issues, com en cas des jurours qe sont a la destresse auxi avant sont lour issues perduz qe viegnent come lour issues qe ne viegnent mie; auxi fut il a la comune ley de la petite xij^{e} en bref datteynte, mes Quid juris clamat.

[1] T., and Harl., A., instead of the name as above.

[2] T., and Harl., A.

[3] The words en sa vie are not in Harl.

[4] le is not in Harl.

[5] et is not in Harl.

[6] Harl., nent.

[7] From L., and 25184, until otherwise stated, but corrected by the record *Placita de Banco*, Mich., 14 Ed. III., R°. 377. The case appears under the head of the previous Trinity term in 25184. The action was brought, as appears in the record, by John de Molyns against Thomas de Coumbe, and Edward, Roger, and Bogo, his brothers, in respect of lands and rent in Castelcoumbe (Castle Combe), Littleton, and Malmesbury (Wilts).

[8] 25184, terce.

[9] 25184, al terce, instead of a le quarte.

[10] 25184, ny.

A.D. 1340. by the Statute[1] *Idem dies* is given them; wherefore, &c. — SCHARDELOWE. There is no similarity in this matter.—*Pole.* Then we pray that the fourth, who does not appear, be distrained in the lands; and do what you will with respect to the others; and we pray that they be put to claim.—*Rokell.* We cannot claim before the other appears.—And afterwards distress in the same land was adjudged against the fourth person, and *Idem dies* was given as to the three, and the whole COURT said that the issues of the three were saved. — *Fencotes.* It is hard law that by reason of one man's non-appearance distress should run on another's land. — SCHARDELOWE. That may be in many cases, but, in such case, one can be aided in another way and discharge himself, &c.

Quid juris clamat.

§ In a *Quid juris clamat* the tenant claimed fee, and it was in respect of rent.—*R. Thorpe.* Since you

[1] 14 Ed. II. (*Statutum de Vicecomitibus, &c.*).

ore par le Statut lour est done *idem dies;* par quei, A.D. 1340.
&c.—SCHARD. Il nest mye semblable en[1] cest matire.
—*Pole.* Donqes prioms nous qe le quarte, qe ne vient pas, soit destreint en lez[2] terrez;[3] et des autres faitz[4] ceo qe vous voleitz; et prioms qils soient mis a clamer. —*Rokel.* Nous ne pooms mie clamer avant ceo qe lautre viegne.—Et puis fut agarde destresse en mesme la terre devers le quarte, et *idem dies* done devers les iij., et tut la COURT dit qe les issues des iij. furent salvez. — *Fenc.* Il est dure ley qe par reson dun homme qe destresse courge en autri terre.— SCHAR. Ceo purra estre en meynt cas, mes homme se purra en tiel cas aider aillours et[5] lui descharger, &c.

§ En[6] un *Quid juris clamat* le tenant clama fee, et ceo fut de rente. — *R. Thorpe.* Del houre qe vous ne Quid juris clamat.

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[1] 25184, a.

[2] 25184, la.

[3] 25184, terre.

[4] 25184, featz.

[5] L., et aillours, instead of aillours et.

[6] This report, also from L., and 25184, though written in those MSS. as the report of a different case, is nevertheless another report of the case next preceding, as appears upon comparison with the record and with the two reports of the same case next following. A brief statement of the pleadings on the roll may render the reports more intelligible. One of the tenants in the writ, Thomas de Coumbe, at first claimed to hold in fee, and it was replied that he held for life, as supposed in the note of the fine levied between Ralph de Coumbe and Margaret his wife, and John de Molyns. Issue was joined on this point. Afterwards the whole of the four tenants pleaded that John de Castelcumbe was seised of the tenements which they were by the fine supposed to hold in common, and demised them to the four to hold for their lives, and that partition of the tenements was made. The tenant Edward said that afterwards Ralph, son and heir of John de Castelcumbe, assigned the reversion of the tenements "to remain" to Edward, his heirs and assigns (by deed produced), that his three brothers attorned to him, and that so he held a fourth part of the tenements in fee, and that the reversion of the other three parts belonged to him in fee. The three other brothers said likewise. John de Molyns said that the four held in common, for life, on the day of the levying of the note of the fine. Issue was joined thereon.

A.D. 1340. do not deny that you had only for term of life, at one time, nor that you held of our cognisor, you shall not be admitted to claim a fee without showing how. —SHARDELOWE. Your own writ gives him the answer; wherefore, &c. — *R. Thorpe.* He held for term of life, of our cognisor, on the day on which the note of the fine was levied, as the note supposes; ready, &c.

§ In a *Quid juris clamat* which John Molins brought against four persons the Sheriff returned, as to one, that he had nothing. Three came and said that the fourth had nothing, and that they three were tenants, but that they did not hold of the cognisor as the note of the fine supposed.—STONORE. This suit is against all, and in the mouth of the fourth, when he comes, lies the answer whether he has anything or not.—Therefore the Sheriff was commanded to distrain the fourth person in the lands whereof the note was levied.—*Idem dies* was given to the others.—BASSET. If he have nothing, it would be hard that the others should be distrained in their lands through the default. —*Thorpe.* Sir, in a writ of Customs and Services against several the distress and issues will run in common as against one person; so also here.—*Quære.*—Afterwards the four came and said that some time they held for term of life by lease from the ancestor of the cognisor, and that they made partition between them; afterwards the cognisor released to one of them his portion and granted him the reversion of the portions of the others by deed (produced).—Nevertheless John was admitted to aver the note.

Quid juris clamat.

§ *Quid juris clamat* for J. de Molyns against four persons, who came and said that they did not hold of the cognisor [on the day on which the note of the fine was levied]. — *Thorpe.* What estate do you claim?— And they were put to answer this.—*Rokell.* The cognisor leased to the four, and afterwards they made par-

deditez mye qe vous navetz qa[1] terme de vie, a un temps, ne qe vous tenistez[2] de nostre conisour, vous navendrez mye a[3] clamer fee saunz mostrer coment. — SCARD. Vostre bref demene ly doune le respouns ;[4] par quey, &c.—*R. Thorpe.* Il tient a terme de vie de nostre conisour, jour de la note leve, com la note suppose ; prest, &c. A.D. 1340. [Fitz. *Quid juris clamat*, 7.]

§ En[5] *Quid juris clamat* qe Johan Molins porta vers iiij. le Vicounte retourna quant al un qil navoit rien. Les iij. vindreint et disoint qe le quart navoit rien, et qe eux iij. furent tenantz, mes qil ne tiendrient pas del conisour com la note suppose. — STON. Cest sute est vers touz, et en la bouche le quart, quant il vendra, gist le respons sil eit rien ou noun. —Par quei comaunde fuit a destreindre le quart en les terres dount la note fuit leve. — *Idem dies* done as autres. — BASSET. Sil neit rien, fort serreit qe les autres serroint destreint en lour terres par la defaute. —*Thorpe.* Sire, en bref de costumes et des services vers plusours la destresse et issues corrount en comune com vers un persone ; auxi icy. — *Quære.* — Pus iiij. vindreint et disoient qil tindreint ascun temps a terme de vie du lees launcestre le conisour et qil firent la partison entre eux ; pus le conisour relessa a un sa porcion et ly granta reversion des porcions des autres par ceo feit. — *Tamen* Johan fuit resceu daverer la note.

§ *Quid*[6] *juris clamat* pur J. de Molyns vers iiij. qe vindrent et disoint qil ne tindrent pas del conisour, &c.—*Thorpe.* Quel estat clames vous ?—Et a ceo furent mys. — *Rokel.* Le conisour lessa a les iiij., et Quid juris clamat. [Fitz. *Quid juris clamat*, 8.]

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[1] L., qe.
[2] 25184, ne tenistez.
[3] L, de.
[4] 25184, lavauntage, instead of le respouns.
[5] This report of the case is from Harl. 741 alone.
[6] This report of the case is from T. alone.

A.D. 1340. tition and severance between them, and then the lessor granted and confirmed to one of them, to hold to him and his heirs, and granted the reversion of the residue to him and his heirs for ever; and the three attorned; wherefore he claimed a fee in that manner; and the others said that the reversion of their tenancies thus belonged to him.—*Thorpe.* You held in common as the note of the fine supposes; ready, &c. — And the other side said the contrary.—*Rokell.* We pray that they may make an attorney.

(42.) § William de Clinton and Juliana his wife brought a writ of Entry against William la Zouche Mortimer, and Eleanor,[1] his wife, and Anthony Cyteroun. — Anthony took upon himself the tenancy upon default of the others,[2] and vouched the same William and Eleanor. Pending the voucher Eleanor died, wherefore Anthony, as tenant for term of life, by lease of the said Eleanor, vouched Hugh le Despenser son and heir of Eleanor. He came and entered into warranty and showed how King Edward, grandfather of the present King, gave these tenements and others in fee tail to Gilbert de Clare, Earl of Gloucester, and how he held these tenements as his purparty, and prayed aid.[3] — *Pole.* You admit yourself that the fee tail is discontinued by the lease, and the reversion belongs to you in fee simple; judgment.—This objection was not allowed. — *Thorpe.* We pray that the prayees in aid be summoned in the counties of A. and B. — *Pole.* They

[1] The name is Alianora in the record.

[2] According to the roll the others disclaimed.

[3] According to the roll, Hugh's allegation was that the manor of Stanford (Berks), given (with other land, &c.) in special tail to Gilbert de Clare and Joan his wife, descended to their son and heir Gilbert, who died without heir of his body, and then to Elizabeth, Margaret, and Eleanor, Hugh's mother, as Gilbert's sisters and heirs, that partition was made, and that the manor in demand was allotted to Eleanor. He prayed and had aid of Eleanor's two sisters.

puis il firent purpartie et severance entre eux, et puis le lessour graunta et conferma a un deux a lui et ses heirs, et graunta la reversion del remenant a lui et ses heirs a touz jours; et eux sattournerent; par quei celui clama fee par la manere; et les autres disoint qe la reversion issi de lour tenance fust a lui.—*Thorpe.* Vous tenistes en comune come la note suppose; prest, &c.—*Et alii e contra.*—*Rokel.* Nous prioms qils puissent faire attorne. A.D. 1340.

(42.)[1] § William de Clintone et Juliane sa femme porterent bref dentre vers William la Zouche Mortimer, et Elene sa femme, et Antone Cyteroun.[2] — Antone enprist tenance par defaute des autres, et voucha mesmes ceux William et Elene, pendant quel voucher Elene morust, par quei Antone, com tenant a terme de vie, du les la dite Elene, voucha Hugh Despenser fitz et heir Elene, qe vint et entra en garrantie et moustra coment le Roi E. ael dona ceux tenementz et autres en fee taille a Gilbert de Clare, Count de Gloucestre, et coment il tint ceux tenementz en purpartie, et pria eide. — *Pole.* Vous mesmes conissez la taille estre discontinue par le lees, et la reversion est a vous com de fee simple; jugement. — *Non allocatur.*—*Thorpe.* Nous prioms qe les priez en eid soient somons en les countes de A. et B.—*Pole.* Ils nount rien en celes countes, et

[1] From Harl. 741, as far as the point at which the larger type ends, but corrected by the record *Placita de Banco*, Mich., 14 Ed. III., R°. 341.

[2] The names of the tenants appear in Harl. as Antone de B., et William South, et Elene sa femme.

A.D. 1340. have nothing in those counties, and we tell you that they have lands in these [other] counties, and we pray that they be summoned there, for we cannot have the *Sequatur suo periculo* in this case. — BASSET, JUSTICE. If the Sheriff return that they have nothing, Hugh shall answer without them. — *Pole.* That cannot be. — Afterwards the summons was awarded in the counties in which the tenant prayed the resummons.[1]

Voucher. § Voucher to warranty (by a tenant for term of life) of Hugh le Despenser, by reason of a reversion on a lease made by Hugh's mother. And Hugh came by summons and said, by *Stouford*, that this land and other lands were given to his grandfather in fee tail, and said that his grandfather died seised, and this land, in satisfaction for other lands allotted to her co-parceners, was cast to the purparty of his mother; and so, saving to himself his action of Formedon, he was ready to warrant; and he prayed aid of his co-parceners.— And the aid was counterpleaded, because by the lease the reversion was saved in fee simple. — This objection was not allowed.—Wherefore the COURT granted the aid.—The tenant prayed that they might be summoned in the county of Kent.— The demandant said that they had nothing there, but had assets in the county of B., and prayed a summons there, because otherwise he would be too much delayed. — WILLOUGHBY. The tenant shall sue where he pleases, for that is his right.—And so it was done.

Warrant of attorney. (43.) § An objection was made to a warrant of attorney for the tenant by the demandant's essoiner. It was not allowed.

Assise of Novel Disseisin. (44.) § Novel disseisin of certain ploughings. The plaint was abated because they do not lie in demesne.

Ravishment of Ward. (45.) § Sir Henry son of Hugh de Ravensworth[2] brought a writ of Ravishment of Ward against Eliza-

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[1] The prayees in aid, having been summoned in Gloucester and Essex, did not appear, and Hugh had to answer without them, as appears on the roll.

[2] Or Sir Henry Fitz-Hugh, of Ravensworth. As to the history of this name *see* the Introduction to the volume of Y. B., 13 and 14 Ed. III., pp. lxxviii–lxxxii.

vous dioms qils ount terres en cels countes, et prioms qil soient somons la, qar nous ne poms aver le *sequatur suo periculo* en ceo cas.—Basset, Justice. Si le Vicounte retourne qil ne ount rien il respondra soul. — *Pole.* Ceo ne put estre. — Pus la somons fu agarde en les countes ou le tenant pria la resomons. A.D. 1340.

§ Voucher[1] a garrant par tenant a terme de vie de Hugh le Despenser par cause de reversion par un lees fait par la mere H., qe vient par somons et dist par *Stouf.* qe cele terre et autres terres furent dones a son ael en fee taille, et dit qil morust seisi, et ceste terre en allowance des autres terres alotes a ses[2] parceners[3] fust jette a[4] la purpartie sa[5] mere; issi, sauf a lui saccion par la forme, prest fust a garrantir, et pria eide de ses[2] parceners.[3] — Et fust[6] contreplede, pur ceo qe par le lees reversion fust saufve en[7] fee simple.—*Non allocatur.*—Par quei Court graunta leide.—Le tenant pria qil fust somons en le counte de Kent.—Le demandant dist qil nad rien la, mes ad assetz el[8] counte de B., et pria somons illoeqes, qar autrement il serra trop delaie. — Wilby. Le[9] tenant suyra ou lui pleist, qar a lui atient.—*Et ita factum est.* Voucher.

(43.)[10] § Garrant dattourne pur le tenant fust challenge par lessonour le demandant. *Non allocatur.* Garannt dattourne.

(44.)[10] § Novele disseisine de[11] certeinz arures. La pleinte fust abatue pur ceo qe ne chiet[12] pas en demene. Assisa nova disseisinæ.

(45.)[13] § Sire Henre le Fitz Hugh de Raveneswath[14] porta un bref de ravissement de garde vers Elizabeth Ravissement de garde.

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[1] This report of the case is from T., and Harl. 741, the latter MS. containing two reports of it.

[2] Harl., ces.

[3] Harl., parsoners.

[4] T., tenu en, instead of jette a.

[5] Harl., la.

[6] Harl., est.

[7] Harl., de.

[8] Harl., en le.

[9] Le is not in Harl.

[10] From T., and Harl. 741.

[11] Harl., ad.

[12] Harl., chist.

[13] From L. and 25184, as far as the point at which the larger type ends, but corrected by the record *Placita de Banco*, Mich., 14 Ed. III., R°. 252.

[14] L., R.

A.D. 1340. beth Spryng, and counted that tortiously, &c., she carried off John brother and heir of Henry Spryng, &c., and counted that the aforesaid Henry held of him the manor of Lyrtington. — *Blaik.* Hugh son of Henry, your father,[1] whose heir you are, by this deed which is here, granted, released, resigned, and quit-claimed all the right that he had in the same manor of Lyrtington, by name of the vill of Lyrtington to H. Spryng, heretofore husband of this same Elizabeth, to hold of him, &c., rendering 1*d.* by the year for all services. Afterwards a fine was levied between this same Humphrey Spryng and Elizabeth his wife and one Robert Lengleys, by which fine Humphrey and Elizabeth acknowledged these same tenements which the plaintiff supposes to be held of him to be the right of Robert, for which acknowledgment Robert granted and rendered these same tenements to Humphrey and this same Elizabeth at that time Humphrey's wife, to have and to hold (to them and the heirs of their two bodies begotten) of the chief lord of the fee, &c. And we tell you that this same person in respect of the ravishment of whom he complains is issue of the two. And we tell you that the aforesaid Henry and John and others disseised us, after the death of Humphrey, our husband, of the third part of this manor, whereupon we brought an assise, &c., and the writ of assise abated by reason of the death of Henry, and so we are your tenant in respect of two parts of this manor, and you are seised of our services; and we demand

[1] *See* Y. B., 13 and 14 Ed. III., Introduction, as above.

Spryng [1] et counta qe a tort, &c., J. frere [2] et heire A.D. 1340.
Henre [3] Spryng ravist, &c., et conta qe lavantdit Henre [4] tient de luy le manere de Lyrtington.—*Blaik.* Hugh [5] le fitz Henre vostre pere, qi heire vous estez, par ceo fait qe yci est, granta, relessa, resigna, et quiteclama tot le dreit [6] qil avoit en mesme la manere de L., par non de la ville de L., a H.[7] Spryng, jadis baroun mesme cesti Elizabeth, a tener de luy, &c., rendant un *d.* par an pur toutz services. Pus fyn se leva par entre mesme cely Humfrey [8] et E. sa feme et un Robert Lengleys,[9] par quele fyn Humfrey [8] et E. conussoient mesmes ceux tenementz quex il suppose estre tenuz de luy estre le dreit Robert,[10] pur quel conisance Robert [10] granta et rendi mesmes ceux tenementz a Humfrey [8] et a mesme cestui [11] E. adonqe sa feme, a aver et tener, a eux et a les [12] heires de lour ij. corps engendres,[13] de chief seignur de fee, &c. Et vous dioms qe mesme celuy de qi ravisment il se pleint est issue entre nous deux. Et vous dioms qe lavantdit Henre [14] et J. et aultres nous disseiserent, apres la mort Humfrey [15] nostre baroun, de la terce partie de cel manere, ou nous portasmes [16] un assise, &c., quel bref abati par la mort Henre,[17] issint sumes nous vostre tenant de lez ij. parties de cele manere, et vous seisi de nos services; et demandoms jugement

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[1] L., Eleabeth de S., instead of Elizabeth Spryng. According to the record the defendant was Elizabeth, late wife of Humphrey Spryng.

[2] L., and 25184, fitz.

[3] L., Humfrey; 25184, Hunfrey.

[4] L., H.; 25184, Hunfrey.

[5] 25184, Henre.

[6] L., demande.

[7] L., and 25184, R. According to the record it was pleaded that the release was to Henry Spryng, who was in seisin at the time, and that the manor descended from him to Humphrey, formerly husband of Elizabeth.

[8] L., and 25184, R.

[9] L., and 25184, W., instead of Robert Lengleys.

[10] L., and 25184, W.

[11] The words a mesme cestui are not in L.

[12] L., lour, instead of a les.

[13] L., issauntz.

[14] L., Humfrey; 25184, Hunfrey.

[15] L., and 25184, R.

[16] L., portassoms.

[17] L., Humfrey; 25184, Umfrey.

A.D. 1340. judgment whether you can maintain this action by reason of the two parts of this manor. And as to the third part we demand judgment whether in opposition to the deed of your ancestor, which proves the tenancy to be in socage, you can maintain this action against us who are the infant's mother. — *Stouford.* Sir, you see clearly that the ravishment is not denied, and that she has not justified it by any cause; and the plea which she pleads is impertinent here in this writ of Ravishment; wherefore we understand that the law will not put us to answer to anything that she has yet said, and we pray, &c. — *Blaik.* In respect of the two parts we claim the freehold itself, for had we pleaded, in respect of the whole, as guardians in socage, we should have given the freehold of the whole to the heir, but by the manner of our pleading we have given him the inheritance of the third part and the freehold, save that we have a right in action, and we have shown that we are the infant's mother, and in respect of the tenancy as above by the deed; judgment, &c. — *W. Thorpe.* By the manner of your pleading you do not claim right in the wardship by reason of socage-tenure when you claim the entire freehold and nothing else in respect of the heir, and you do not avow the ravishment for any cause, and even though I had no right in the wardship it would not be for you to counterplead my right or for anyone except one who claims right in the same wardship upon this writ of Ravishment; wherefore we have no need to answer to you, &c. And, if the Court considers that we have, we are ready to answer sufficiently. — *Blaik.* Upon this writ we cannot take issue upon seisin; and it may

si [par resoun de les ij. parties cest accion poyez meyntener. Et quant a la terce partie nous demandoms jugement si][1] encontre le fait vostre auncestre, qe prove la tenance en sokage, devers nous qe sumes miere lenfant, cest accion poiez mayntener. — *Stouff.* Sire, vous veiez bien coment le ravissement nest pas dedit, ne il nad mye justifie par cause; et le plee quele ele plede si est inpertinent en ce bref de ravisment; par quei nous entendoms qe a rien qele ad unqore dit le ley nous mettra a respoundre, et prioms, &c. — *Blaik.* En dreit de les ij. parties nous clamons le franctenement mesme, qar si nous pledassoms del tot com gardeyn en sokage, nous donassoms del tut le franctenement al heire, mes de la tercie partie par manere[2] nous lui[3] avoms done lenheritance, et le franctenement, salve qe nous avoms dreit en accion, et avoms moustre[4] qe nous sumes la[5] mire et de la tenance *ut*[6] *supra* par le fait; jugement, &c. — *W. Thorpe.* Par manere de vostre plee vous ne clamez mye dreit en la garde par cause de sokage quant vous clamez le[7] franctenement enter et rien destre al le heire, ne vous nawowez mye le ravissement par cause, et mesqe jeo navoy mye dreit en la garde[8] il ne serra mye a vous ne a nully de contrepleder mon dreit mes a[9] celuy qe clame dreit en mesme la garde en cest bref de ravissement; par quei a vous navoms mester a respoundre, &c. Et, si Court veie qe si, prest a dire assetz. — *Blaik.* En cesti bref nous ne pooms mye prendre issue sour seisine; et put estre qe A.D. 1349.

[1] The words between brackets are not in L.
[2] The words par manere are not in L.
[3] lui is not in L.
[4] L., nous moustroms, instead of avoms moustre.
[5] L., sa.
[6] *ut* is not in L.
[7] le is not in L.
[8] The words en la garde are not in 25184.
[9] a is not in L.

A.D. 1340. be that we did not carry away the infant; and if we were to allow such an issue it would be to acknowledge the tenancy to be such as you have supposed, &c., and, perhaps, that would be prejudicial to us at another time; and, since you do not deny the deed of your ancestor, judgment whether against us, who are the infant's mother, as above. — (And note that strong objection was made to *Blaik's* answer at the commencement, because they understood that he had not made the defendant the infant's mother by his answer, but altogether by way of claiming the freehold to herself, &c. — *Quære* as to this.) — ALDEBURGH. Such a plea as he pleads would be a good plea, upon a writ of Right of Wardship, by tenant by the curtesy of England, as to show how he was the infant's father to whom nurture appertained, with the conclusion, "and we demand "judgment, &c."; and so also it seems in this case.— And they were adjourned.

Ravishment of Ward.

§ Ravishment of Ward for Henry son of Hugh was brought against one Alice,[1] in respect of one J. brother and heir of Henry Spryng.—*Blaik.* We tell you that one E., father of J. and Henry, the wardship of whose heir you demand, held these tenements, that is to say the manor of L., of Hugh your ancestor, whose heir you are, which Hugh ratified and confirmed his estate, by this deed, to hold of him and his heirs by the service of one penny by the year for all services; afterwards a fine was levied between E. and Alice against whom this writ is brought of the one part and W.[1] of the other part, by which W.[1] granted and rendered the same manor to E. and Alice his wife and the heirs of E., &c.; and we hold two parts by force of the fine, and Henry whose heir you demand and J. his brother disseised us of the third part, for which we brought an assise against them and others, and that writ of assise abated by the death of H. who was tenant; wherefore J. his brother entered and is seised of that third part, and we have our assise pending against him and others; judgment whether by reason of that tenancy you can have an action against us who are the infant's mother. And he showed the ancestor's deed and the fine.—*Thorpe.* She

[1] For the real names *see* the next preceding report of this case, corrected by the record.

nous nel[1] ravismes[2] mye; et si nous donoms tiel issue A.D. 1340.
ceo serroit a conustre la tenance tiel com vous avetz suppose, &c., et par cas ceo serreit altrefoit prejudicial a nous; et, del houre qe vous ne deditez mye le fait vostre auncestre, jugement si devers nous, qe sumes miere lenfant, *ut supra.—Et nota* qe le respons *Blaik* au commencement fut fortement chalenge pur ceo qils entendirent qil[3] ne se ust mye fait miere lenfant par son respons mes tot en clamant le franctenement a luy mesme,[4] &c. — *Quære de hoc.* — ALD. Tiel plee com il plede serreit boun plee, en un bref de dreit de garde, pur le tenant par la[5] ley Dengleterre, ou a moustrer[6] coment il fut pere lenfant a qui la norture appartient—et demandoms jugement, &c.; et auxi semble il yci.—*Et adjournantur*, &c.

§ Ravisement[7] de garde pur Henry fitz Hughe porte vers une Alice dun J. frer et heir Henry Spryng. — *Blayk.* Nous vous dioms qun E. pere J. et Henry, la garde de qi heir vous demandez, tient ses tenementz, saver le manoir de L., de Hughe vostre auncestre, qi heir vous estes, le quel Hughe par ceo fet ratifia et conferma son estat par ceo fet, a tenir de lui et ses heirs pur les services dun dener par an pur touz services; puis fine se leva entre E. et A. vers qi ceo bref est porte dune part et W. dautre part, par quel W.[8] granta et rendi mesme le manoir a E. et A. sa femme et les heirs E., &c.; et nous tenoms les ij. parties par force de la fyne, et de la terce partie Henry qi heir vous demandez et J. son frere nous disseisirent, de qi nous portames lassise vers eux et autres, et cel bref abatist par la mort H. qe fust tenant; par quei cele terce partie J. son frere entra et seisi est, et nous avoms nostre assise pendaunt vers lui et autres; jugement si vers nous qe sumes mere lenfant par resoun de cele tenance puissez accion aver. Et moustra fet launcestre et la fine.—*Thorpe.* Ele ne cleyme rien en la garde; par quei plee

Ravisment de garde.

[1] L., ne.
[2] 25184, ravymes.
[3] L., qele.
[4] mesme is not in 25184.
[5] la is not in L.
[6] L., ore ad moustre, instead of ou a moustrer.
[7] This report of the case is from T. alone.
[8] T., Hughe. The name should be Humphrey.

A.D. 1340. claims nothing in the wardship; wherefore a plea to the tenancy does not lie in her mouth, and particularly upon this writ, where the tenancy is not traversable if the ravishment be not allowed. — And in this plea it was said that a tenant by the curtesy of England shall have the wardship of his own heir but not of his wife's heir.—*Blaik.* By reason of the two parts you can not have the wardship, for thereof we remain by the fine your tenant, nor by reason of the third part, for it is proved to be socage by your ancestor's deed, in which case the wardship by reason of nurture belongs to us.

—*Stouford.* The infant's ancestor held of us by knight-service; ready, &c. — And he could not be admitted to that, in opposition to the deed; wherefore he denied the deed.—And the other side joined issue.[1]

Entry *sur disseisin.*

(46.) § Sir John de Beauchamp brought a writ of Entry *sur disseisin,* in respect of a disseisin effected on his father, against the Prior of Worspring.—*Derworthy.* On such a day, &c., we ourselves brought an assise of Novel Disseisin, &c.,[2] and recovered; and the estate in respect of which you take this action was mesne between the disseisin effected on us and execution sued on the same recovery; judgment whether in respect of such a mesne estate you can maintain this action. —*W. Thorpe.* As to that we tell you that Henry de Cary [3] and Robert atte Nye held the land immediately of one William Louesheft, which William held it over of our father, and Henry and Robert aliened this land in mortmain,[4] without the license of William, who was the immediate lord, or that of our father; and William did not enter within the year and a day, wherefore, by reason of his negli-

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[1] In the end judgment was given for the defendant upon failure of the plaintiff to appear on the day given, as appears by the record.

[2] Against Simon de Forniaux and others, as appears by the record.

[3] Vicar of the church of Lokkyng, or Locking (Somerset), according to the record.

[4] To the Prior and his successors, as appears by the record.

a la tenance ne gist pas en sa bouche, et nomement en ceo bref la ou tenance nest pas traversable si le ravisement ne fust alowe. — Et en ceo plee est dit qe tenant par la ley Dengleterre avera la garde de son heir demene et noun del heir sa femme.—*Blaik.* Par resoun de ij. parties ne puissez aver la garde, qar de ceo nous demoroms par la fyne vostre tenant, ne par cause de la terce partie, qar cest prove sokage par le fet vostre auncestre, ou la garde par resoun de nourture apent a nous. A.D. 1340.

—*Stouf.* Launcestre lenfant tient de nous par service de chivaler; prest, &c.—Et a ceo ne poet estre resceu contre le fet; par quei il dedit le fet.—*Alii e contra.*[1]

Entre sour disseisine. [Fitz. *Issue*, 24.]

(46.)[2] § Sire Johan de Beauchamp porta un[3] bref dentre sour disseisine, de un disseisine fait a son pere,[4] vers le Prior de Worspring,[5] &c.—*Derw.* Tiel jour, &c., nous mesmes portames un assise de novele disseisine, &c., et recoverimes; et lestat dount vous pernez cesti accion si fust meen par entre la disseisine fait a nous et execucion suy sour mesme le recoverir; jugement si de tiel estat meen poiez ceste accion mayntener.[6]—*W. Thorpe.* A ceo vous dioms nous qe Henre de Cary et Robert atte Nye tindrent[7] la terre dun William Louesheft,[8] lequel W. la tient outre de nostre pere,[9] quel Henre et Robert alienerent[10] ceste terre a mort-meyn, sanz licence de W. qe fust seignur immediat, ou de nostre pere,[9] le quel W. nentra mye deynz lan et le jour, par quei, par sa negligens, nostre pere[9] com

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[1] There is also a third, but imperfect, report of this case in Harl. 741.

[2] From L., and 25184, as far as the point at which the larger type ends, but corrected by the record *Placita de Banco*, Mich., 14 Ed. III., R°. 202 d.

[3] 25184, son.

[4] L., and 25184, luy mesme, instead of son pere, the reading which is required and is supplied from the record.

[5] L., O.; 25184, T.

[6] L., meen estat accion poietz aver, instead of estat meen poiez ceste accion mayntener.

[7] L., and 25184, J. de S. tient, instead of Henry de Cary et Robert atte Nye tindrent; the names are from the record.

[8] L., and 25184, W. de C., instead of William Louesheft.

[9] L., and 25184, nous, instead of nostre pere.

[10] L., and 25184, J. de S. aliena, instead of Henre et Robert alienerent.

A.D. 1340. gence, our father, as his immediate lord, entered within the half-year after the year; and so by that entry the recovery which you allege was annulled and defeated; and we demand judgment, and pray seisin of the land. —*Derworthy.* Henry and Robert held the land of this same Prior and not of William, nor did William hold of the demandant's father as he supposed; ready, &c.— And the averment was received in that form.

Entry *sur disseisin.*

§ Entry *sur disseisin* which J. Beauchamp brought against a Prior, on the seisin of his ancestor, supposing that the Prior committed the disseisin. — *Derworthy.* The Prior brought an assise of Novel Disseisin against one B., and recovered on a verdict of the Assise, and the estate which the demandant's father had was mesne between the disseisin and the recovery; judgment. — *Pole.* We tell you that the Prior purchased the tenements of one J., who held the tenements of one B., which B. held the tenements of our ancestor; and because B. did not enter within the year, according to the Statute,[1] our ancestor entered within the half-year following; judgment, since by the entry of our ancestor the Prior's possession which he recovered was defeated, whether by such recovery you can oust us from this action.—*Derworthy.* We tell you that J. did not hold of B., nor did B. hold of your ancestor, but he held of the Prior; ready, &c.; for it was of our fee. — Willoughby. You have given a cause for which you entered, which he has traversed; will you have the averment? — Wherefore *Stouford* maintained it by averment.—And the other side said the contrary. — And Willoughby said that if the land was once amortised in the hand of the Prior, and aliened, and afterwards purchased, that purchase was not contrary to the Statute.[1]—*Quære.*

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[1] 7 Ed. I. (*De Religiosis.*).

seignur immediat[1] deynz le demi an apres lan entra ; issint par cele entre le recoverir quel vous alleggez anyenti et defait ; et demandoms jugement, et prioms seisine de terre. — *Der.* Henre et Robert tindrent[2] la terre de mesme celuy Priour et non pas de W., ne W. de luy[3] com il avoit suppose ; prest, &c. — Et laverement issint resceu, &c. A.D. 1340.

§ Entre[4] sur disseisine qe J. Beauchamp porta vers un Priour de la seisine son auncestre, supposant qe le Priour fist la disseisine. — *Derworth.* Le Priour porta une assise [de] Novele disseisine vers un B., et recoveri sur verdist dassise, et lestat qe son pere avoit ceo fust mene entre la disseisine et le recoverir ; jugement. — *Pole.* Nous vous dioms qe le Priour purchacea les tenementz dun J., le quel tient les tenementz dun B., le quel B. tient les tenementz de nostre auncestre ; et pur ceo qe B. entra pas deinz lan par statut, nostre auncestre entra deinz le demi an apres ; jugement, del houre qe par lentre nostre auncestre la possession le Priour de quel il recoveri si fust defait, si par tiel recoverir nous puissez de ceste accion ouster.[5] — *Derworth.*[6] Nous vous dioms qe J. ne tient pas de B., ne B. de vostre auncestre, mes tient del Priour ; prest, &c. ; qar cest fust de nostre fee. — Wilby. Vous avez done cause par quei vous entrastes, quel il ad traverse ; voillez laverement ? — Par quei *Stouf.* le meintient par averement. — *Et alii e contra.* — Et Wilby dist qe [si] la terre fust une foitz amorti en la mayn le Priour, et aliene, et puis purchace, qe cel purchas nest contre Statut. — *Quære.*[7] Entre sur disseisine.

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[1] L., mediate.

[2] L., and 25184, J. de S. tient, instead of Henre et Robert tindrent.

[3] For the words from and including luy to the end of the report there are substituted in 25184 the following : — vous ; *et alii e contra*, saver qil tient du Priour immediatement et ne mie de W., ne W. de lui, com il avoit suppose ; prest, &c. — Et laverrement issint resceu, &c.

[4] This report of the case is from T. alone.

[5] The conclusion of the replication is in the record as follows : — Et petit judicium, desicut seisina prædicta Prioris de prædictis tenementis per ingressum prædicti Johannis patris, &c., in eisdem prætextu Statuti prædicti adnullata fuit, si prædictus Prior per aliquod recuperare versus extraneos, ad quos prædictus Johannes pater non fuit pars, seisinam suam de eisdem tenementis versus ipsum Johannem manutenere, et ipsum ad eadem tenementa petendum in hoc casu excludere possit, &c.

[6] T., *Pole.*

[7] There is also an imperfect report of this case in Harl. 741.

A.D. 1340. Formedon. (47.) § A writ of Formedon in the Reverter was brought against the Abbot of Westminster, and the writ purported that Richard de C. the elder gave to Richard de C. the younger and Alice his wife and the heirs male of their bodies issuing, and that the tenements, after the death of the aforesaid R. de C. the younger, and Alice, and Thomas son of the aforesaid R. de C. the younger and Alice, ought to revert to the aforesaid demandant, because the aforesaid Thomas died without heir male issuing from his body. — *W. Thorpe.* He supposes this land to be revertible to him because Thomas died without heir male, &c., and the writ does not make him heir in tail; so his writ does not prove his action, for it may be that there is another heir living; judgment of the writ, since, if he survived, and was not seised, there was no need to have made mention of him either in the writ or in the count; wherefore, &c. — BASSET. Even though he had been seised there was still no need to have named him, nor, even had there been twenty seised, one after the other, was there any need to have mentioned any except the donees. — *R. Thorpe.* Saving to us this exception, again judgment of the writ, for it ought to have made Thomas dead without heir of his body, inasmuch as he supposes that in law the entail has been fulfilled.—And afterwards he had view, &c.

Formedon. § In a Formedon in the Reverter against the Abbot of Westminster the writ supposed the gift to have been made to Robert de Camvill and Amice his wife in fee tail, "and which "tenement, after the death of the aforesaid Robert and Amice "and Thomas son of the aforesaid Robert and Amice, ought "to revert to L., cousin and heir of the donor, because the "aforesaid Thomas died without heir male of his body issuing," and the writ supposed the gift to have been made to R. and

(47.)[1] § Un bref de forme de doun en le reverti fut porte vers Labbe de Westmestre, et le bref voiloit "quod Ricardus de C. senior dedit Ricardo de C. juniori "et Aliciæ uxori ejus et heredibus masculis de corpori- "bus eorum[2] exeuntibus,[3] et quæ post mortem prædic- "torum R. de C. junioris et Aliciæ et Thomæ filii præ- "dictorum R. de C. junioris et Aliciæ præfato &c., "reverti debent, &c., eo quod prædictus Thomas obiit "sine herede masculo de corpore suo[4] exeunte.[5]"— *W. Thorpe.* Il suppose ceste terre revertible[6] a luy pur ceo qe Thomas morust sanz heire malde, &c., et le bref ne luy fait heire[7] en la taille; issint son bref ne prove my saccion, qar put estre qil y ad[8] autre heire en pleyne vie; jugement du bref, ou sil[9] sourvesqui et ne fut mye seisi il ne bosoignast ja daver fait mencion de luy ne par bref ne par conte; par quei, &c. — BASS. Mes qe il eust este seisi, il ne bosoignast pas[10] ja luy aver nome, ne mes qe ils eussent xx. este[11] seisi chescun apres autres, fors daver fait mencion de lez dones.[12] — *R. Thorpe.* Salve a nous ceste chalenge, unqore jugement de bref, qar il dust aver fait Thomas mort sanz heire de soun corps la ou il mesmes suppose en ley la taille acompli. — *Et postea habuit visum*, &c. A.D. 1340. Forme de doun.

§ En[13] forme de doun en le reverti vers Labbe de Westmestre le bref supposa le doun estre fait a Robert de Camvill et Amice sa femme en fee taille "et quod, post mortem præ- "dictorum Roberti et Amiciæ et Thomæ filii prædictorum Ro- "berti et Amiciæ, L. consanguineo et heredi donatoris reverti "debet, eo quod prædictus Thomas, &c., sine herede masculo de "corpore suo exeunte," et le bref supposa le doun estre fait Forme de doun.

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[1] From L., and 25184, as far as the point at which the larger type ends.

[2] 24184, ipsorum.

[3] 25184, &c.

[4] 25184, corporibus suis, instead of corpore suo.

[5] L., &c.; 25184, exeuntibus.

[6] L., revertiblez.

[7] L., pur heire.

[8] L., aye, instead of y ad.

[9] L., il.

[10] pas is not in 25184.

[11] L., foith.

[12] L., dounz.

[13] This report of the case is from Harl. 741.

A.D. 1340. A., and the heirs male of their bodies, &c. — *Thorpe.* You demand the reversion because Thomas died without male issue, and you have not made Thomas heir in tail by the writ, whereas neither the donor nor his heirs can claim reversion in such case except by default of issue of tenant in tail or of heir in tail, for if Thomas died while R. and A. were living, the writ would be good without making mention of him, and, for anything that your writ supposes, there may be a younger son. — *Gayneford.* If there were a younger son you could allege that by way of answer, and though Thomas is named, though he was not seised, the writ is none the less good, and even if he had been seised we had no need to make him heir because we do not claim through him.—And they adjudged the writ good, &c.

Formedon. § Formedon in the Reverter, supposing the gift to have been to W. and A. and the heirs male of his body, and that the tenements, after the death of W. and A. and of Thomas son of the same W. and A., ought to revert to the demandant, because Thomas died without heir male. — *Thorpe.* Judgment of the writ; for Thomas is not made heir of W. or of A., nor is his seisin supposed, so the writ is not sued according to its nature; for the right cannot revert except by the death of the donee or his heir. — SCHARDELOWE. If he was not seised he should not be made heir; and if there were three or four persons in the descent, there is no need to make mention of all. — And the COURT would not abate the writ.—*Thorpe.* Judgment of the writ; for the writ purports that Thomas died without heir male, whereas the writ should be in the form "because he "died without heir, &c.," for if he had an heir female she would inherit —And afterwards he demanded the view.

Formedon. (48.) § Formedon in the Descender. The demandant made herself heir to her grandfather. — *Pole.* Your father was seised; judgment of the writ. — *Stouford.* Ready, &c., that he was not.

a R. et A. et as heires madles de lour corps, &c.—*Thorpe.* A.D. 1340.
Vous demandez la reversion par cause de ceo qe Thomas morust sanz issue madle, et vous navez pas fet Thomas heir en taille par le bref, ou le donour ne ces heirs ne pount pas clamer reversion en tiel cas si noun par defaute de issu de tenant en taille ou de heir en taille, qar si Thomas devia, vivaunt R. et A., le bref serra boun sanz faire mencion de ly, et, pur rien qe vostre bref suppose, il pout aver fitz pusne. —*Gayn.* Sil fu fitz pusne, ceo poez allegger par voi de respons, et tut ly est nome, la ou il ne fut pas seisi, le bref ne valt pas le meinz, tut fut il seisi nous navoms pas mester de feir ly heir, qar nous ne clamoms point parmie ly. — Et agarderent le bref boun, &c.

§ *Reverti,*[1] supposant le doun estre a W. et A. et les heirs malds de son corps, et les quex apres la mort W. et A. et Thomas fitz mesmes ses W. et A. al demandant reverti deivent, pur ceo qe Thomas morust sanz heir malde. — *Thorpe.* Jugement du bref; qar Thomas nest pas fait heir a W. ne A., ne sa seisine nest pas suppose, issi nest pas le bref suy en sa nature; qar le dreit ne poet pas revertier sil ne soit par la mort le done ou son heir.—Schard. Sil ne fust seisi il ne serra pas fait heir; et sil furent iij. ou iiij. en la descente, il ne bosoigne pas faire mencion de touz.—Et Court ne voleit abatre le bref. — *Thorpe.* Jugement du bref; qar le [bref] voet qe Thomas morust saunz heir madle, ou le bref serreit pur ceo qil morust saunz heir, &c., qar sil ust heir female ele serreit enherite.—Et puis il demanda la vewe. Forma donationis.

(48.)[2] § Descendre. Le demandant se fist heir a son ael. — *Pole.* Vostre pere fust seisi; jugement du bref.—*Stouf.* Prest, &c., qe noun. Forma donationis.

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[1] This report of the case is from T. alone.

[2] From T. alone. The case may be that of which there is a record among the *Placita de Banco,* Mich., 14 Ed. III., R°. 377 d. Roger Housewyfe of Frekenham (Norfolk) and Katharine his wife brought a writ of Formedon in the Descender against Alice, late wife of Peter de Nerford, and Ralph, son of Patrick de Tyndale, on a gift to Ralph le Blount and Ellen his wife in special tail. The descent of the right was to William, son and heir of the donees, and from him to Katharine, the seisin of William not being mentioned. The tenants prayed judgment because William was seised. The demandants traversed his seisin, and issue was joined thereon.

A.D. 1340. Franchise demanded.

(49.) § Upon a writ of Entry the franchise of Hereford was allowed. — Afterwards the parties came into the Common Bench by re-summons.—*Thorpe* counted. — The bailiffs demanded the franchise. — *Thorpe.* You ought not to have the franchise, for, at the time at which the parties came into your Court, we counted, and the tenant defended and demanded oyer of the transcript which was delivered to you out of this Court; and it was read, and in it there were wanting the words *quod clamat esse jus et hereditatem;* and the tenant took exception to it, upon which exception the Court adjourned us; so there will be a failure of justice towards us, inasmuch as the demandant cannot sue in this Court to have a good warrant.—*R. Thorpe.* One has seen a franchise allowed without delivery of transcript. — This was not allowed. — *R. Thorpe.* The transcript was good, and no such exception was taken as you allege; ready, &c. But you counted of the seisin of your ancestor in the time of King Edward father of the present King, as to which count you were allowed. We imparled, and came back, and then you wished to amend your count, and counted of the seisin of your ancestor in the time of another King. We said that you should not be admitted to that, upon which exception we were adjourned. — *Thorpe.* Now you have admitted that you have failed in justice towards us, for, before exception has been taken by a party, we are perfectly at liberty to amend our count. — *R. Thorpe.* He does not maintain his first exception; wherefore we pray cognisance of the plea.—This was not allowed. —The JUSTICES were of opinion that the demandant could not in this case have amended his count. — Therefore the franchise was allowed.

Franchise challenged.

§ On a re-summons a franchise was opposed when it had been previously allowed. And it was said that the Court [of the Liberty] failed in doing justice, inasmuch as they read a false transcript when the tenant demanded oyer of the writ; and exception was taken to this; and upon this there was afterwards

(49.)[1] § En bref dentre la fraunchise de Herford fu grante.—Pus par resomons les parties vindreint en Bank. — *Thorpe* counta. — Les baillifs demanderent la fraunchise.—*Thorpe.* Vous ne devez la fraunchise aver, qar al temps qe les parties vindreint en vostre Court nous countames, et le tenant defendi et demanda oy du transecript qe vous fu baille hors de ceinz;[2] et ceo fu lieu en quel il y failli *quod clamat esse jus et hereditatem;* et le tenant le chalenga, sour quel chalenge la Court nous ajourna; issint nous faillira de dreit, en tant com il ne suira pas ceinz daver bon garrant. — *R. Thorpe.* Homme ad vewe fraunchise grante sanz liverer transecript. — *Non allocatur.* — *R. Thorpe.* Le transecript fu boun, et nul tiel chalenge fu done come vous alleggez; prest, &c. Mes vous countastes de la seisine vostre auncestre en temps le Roi E. pere, sour quel counte vous fustes allowe. Nous enparlames, et revenimes, et donqes voudrez amender vostre counte, et countastes de seisine de vostre auncestre en temps dautre Roi. Nous deismes qe a ceo navendrez mye, sour quel chalenge nous fumes ajournes. — *Thorpe.* Ore avez conu qe vous nous faillistes de dreit, qar bien purroms avant chalenge de partie amender nostre counte. — *R. Thorpe.* Il ne maintient pas soun primer chalenge; par quei nous prioms la conisance. — *Non allocatur.* — Fu avys a les JUSTICES qil ne pout en ceo cas aver amende son counte.—*Ideo* la fraunchise grante. A.D. 1340. Fraunchise demande. [Fitz. *Conisans,* 79.]

§ Fraunchise,[3] a un resomons, chalenge ou ele fust autrefoitz alowe. Et fust dit qe la Court failly de dreit, en taunt qil lieuroint un faux transcript quant tenant demanda oy du bref; et ceo fust chalenge; et puis sur ceo ajourne; et sil Fraunchise chalenge.

[1] From Harl. 741 alone, as far as the point at which the larger type ends.

[2] Harl., ceux.

[3] This report of the case is from T. alone.

A.D. 1340. an adjournment; and if they had abated the writ there, we who are demandant should not have had a re-summons out of this Court.—*Thorpe.* No transcript was read there; but he counted that his ancestor was seised in the time of the present King, and we imparled, and then he wished to change his count, and he said that his ancestor was seised in the time of the father of the present King, and we said that he should not be admitted to that; whereupon we were adjourned, when your count should have been abated; and the delay which followed was to your advantage.—*Pole.* Now he has admitted that they held the plea without an original; and also we think that the demandant could change his count before exception had been taken by the party.—SCHARSHULLE. Then is it so?—*Pole.* Yes, Sir.—SCHARSHULLE. Sue allowance of your franchise.

Formedon. (50.) § Peter Nutil brought a writ of Formedon against Edmund Kyllum in the Liberty of the Bishop [of Durham], where the deed of his ancestor was pleaded in bar, and that he had assets by descent in the counties of York and Lincoln, upon which they were at issue. And because the issue could not be tried there, the Court put the parol without day; and afterwards for that reason the record was reversed before the Bishop himself, because the Justices ought to have continued the plea by adjournment. And the Bishop, when he had reversed on this point, gave a day to the parties before his Justices, where the plea was pleaded; at which day the tenant caused himself to be essoined. And afterwards by the King's writ the record was removed to try the issue here. And now the tenant is essoined, and exception is taken because he was essoined in the liberty after the inquest was joined.—This exception was not allowed.—Wherefore the essoin was adjourned.—*Blaik.* We pray a writ to cause the Inquest to come.—*Mallum.* When came the plea before the Bishop's Justices after the record had been reversed before him in a higher Court? —*Blaik.* It was by adjournment, and so they would make an adjournment into this Court out of the King's Bench. —*Pole.* Never; but they would go on with the plea there.

ussent abatu le bref la, nous qe sumes demandant nussoms pas ew resomons hors de ceste Court.—*Thorpe.* Nul transcript fust lieu la; mes il counta qe son auncestre fust seisi en temps le Roi qor est, et nous enparlames, et puis il voleit aver chalenge nostre conte, et dit qe son auncestre fust seisi en temps le pere le Roi qor est, et nous deimes qil ne serra pas resceu; sur quei nous fumes ajourne, ou vostre conte dust estre abatu; et le delay qil y avoit ceo fust en vostre avantage. — *Pole.* Ore ad il conu qil tindrent plee sanz original, et auxi nous entendoms qe le demandant poet chaunger son count avant chalange de partie.—Sch. Donqes est il issi?—*Pole.* Sire, oyl.—Sch. Suez alowance de vostre fraunchise. A.D. 1340.

(50.)[1] § Piers Nutil[2] porta bref de Forme doun vers Esmund Kyllum en la fraunchise Levesqe, ou le fet son auncestre fust plede en barre et qil avoit assetz par descente en les countes Deverwyk et Nicole, sur quei sont a issue. Et pur ceo qe lissu illoeqes ne poet estre trie, Court mist la parole sanz jour; et par cele resoun apres le record devant Levesqe mesme fust reverse pur ceo les Justices duissent aver continue le plee par ajournement. Et Levesqe quant il avoit reverse en ceo point il dona jour a les parties devant ses Justices, ou le plee fust plede; a quel jour le tenant se fist essoner. Et puis par bref le Roi le record fust remue pur trier lissu icy. Et ore le tenant est essone, et est chalenge pur ceo qil fust essone en la fraunchise pus lenquest joynt. — *Non allocatur.* — Par quei lessone fust ajourne. — *Blaik.* Nous prioms bref de faire venir lenquest.—*Mallum.* Quant vient le plee devant les Justices Levesqe quant le record fust reverse devant lui en pluis haut place? — *Blaik.* Par ajournement, et issi voleint faire hors de Bank le Roi ajourner icy. — *Pole.* Jammes; mes

Forma donationis. [Fitz. *Errour*, 6.] [Fitz. *Jour*, 25.] [Fitz. *Essone*, 11.]

[1] From T. alone. According to the record (*Placita de Banco*, Mich., 14 Ed. III., R°. 318) the action was brought by Peter, son of John de Nutil, against Edmund de Kyllum in respect of a moiety of the manor of Little Brunne (Durham). There is another report or abridgment of the case in Hil., 15 Ed. III., No. 45.

[2] T., Nuttle.

A.D. 1340. And he produced a writ to the effect that if there was any error the party should have nothing; and he alleged that the Bishop mistook when he adjourned.—And *Thorpe* said:—A plea of land shall not be pleaded in the King's Bench; for that would be against Magna Charta, which says that "common pleas shall not follow our Court"; and the assise between the lord of Clifford and H. son of H. was reversed, and it was afterwards taken before the Justices assigned, &c.—*Pole.* They got to the assise previously; and they were not adjourned before the Justices assigned, but the record was sued before them by writ. — *Blaik.* The Bishop is as a King there, and can adjourn whither he pleases; and it is the custom there. — *Thorpe.* When the record is removed into this Court out of ancient demesne and reversed, the process of the plea shall be in this Court.—HILLARY. Still in your case it is necessary to allow their custom in this Court; and by the writ which you have put forward we can do nothing, for it does not belong to this Court to adjudge Error. — Afterwards by the consideration of the whole COURT in Hillary term, *Venire facias* issued to the Sheriff of the County of York[1] on the issue joined at Durham.[2]

Writ of Trespass. (51.) § Hugh de Audele, Earl of Gloucester, brought a writ of Trespass against several persons for that they entered his free chase at Dortimore, and took wild beasts — a certain number of stags and hinds, &c.—*Pole.* This writ does not lie except as in vill or hamlet, and you have not named in the writ either vill or hamlet; judgment of the writ. — *Thorpe.* If the place be without vill and hamlet, then our writ is good, wherefore, if you wish to abate my writ, a plea in certain must come from you.—And the COURT held the writ to be good if the defendant could not say anything

[1] The *Venire* issued to the sheriffs of the counties both of York and Lincoln, as appears by the record.

[2] According to the record the cause was to be sent before the King in Chancery, in Hil., 22 Ed. III.

tendre le plee avant la. Et il mist avant bref qe si errour y fust qil eut rien, et alegea qe Levesqe mesprist quant il ajourna.—Et *Thorpe.* Plee de terre ne serra pas plede en Bank le Roi, qar ceo serra contre la graund Chartre qe voet "quod communia "placita non sequantur curiam nostram"; et lassise entre le seignur de Clifford et H. fitz H. fust reverse, et puis devant Justices assignes fust prise, &c.—*Pole.* Il furent al assise devant, et si ne furent il pas ajournes devant Justices assignes, mes le record fust suy devant eux par bref.—*Blaik.* Levesqe est come Roi illoeqes, et poet ajourner ou lui plerra; et cest usage illoeqes.—*Thorpe.* Quant le record est remue ceinz hors danciene demene et reverse, le proces le plee serra ceinz.—HILL. Uncore il covient en vostre cas alower ceinz lour usage; et pur le bref qe vous avez mys avant nous ne poms rien faire, qar en ceste place il nattyent pas dajuger errour.—Puis par avys de toute la COURT *Termino Hillarii Venire facias* a Vicounte Deverwyk sur lissu joynt a Duresme.[1] A.D. 1340.

(51.)[2] § Hughe Daudele, Counte de Gloucestre, porta bref de trespas vers plusours de ceo qen sa fraunche chace a Dortimore entra et bestes savages, certain noumbre des cerfs et bisses, &c., prist, &c.—*Pole.* Ceo bref ne gist fors en ville ou en hamel, et vous navez pas nome en bref ville ne hamel; jugement de bref.—*Thorpe.* Si le lieu soit hors de ville et de hamel, donqes est nostre bref bon, par quei si vous volez abatre moun bref il covient qe moun plee viegne de vous. —Et la COURTE tint le bref boun si le defendant ne Bref de Trespas.

[1] There is a short abridgment of this case in Harl. 741, as of this Michaelmas Term. There is also in the same MS., and in L., a report which seems to refer to the same case, which appears under the head of Hilary Term, 15 Ed. III., and which is printed below among the reports of that term.

[2] From Harl. 741 alone, as far as the point at which the larger type ends.

A.D. 1340. more. — [*Pole.*] Dortimore is in the vill of A.; judgment of the writ.—*Thorpe.* The free chase in Dortimore may be partly within the vill and partly without the vill, even though the chase be named by that name, &c.

Trespass. § Trespass, for that the defendant hunted in the plaintiff's free chase of A.—*Pole.* A. is not described as either a vill or a hamlet; judgment of the writ. — *Thorpe.* That is no plea, if you do not say that A. is a vill or a hamlet. — And so it seemed to the COURT.

Mesne. (52.) § A writ of Mesne was brought against the Abbot of Our Lady of York.—And the plaintiff counted that he held of the Abbot, &c., and that the Abbot ought to acquit him of services against all people, and said that Sir Peter de Mauley Le Quinter distrained him for homage.— *W. Thorpe.* This Peter has neither fee nor seignory in this land in respect of which you demand acquittal; judgment of this writ. — *Rokell.* Do you intend that for your answer?—*W. Thorpe.* I intend it for that which it is; say you what you will.—*Rokell.* To begin with, we pray that the liability to acquit be held as not denied by you.—And this was not allowed, for it was said that the defendant pleaded only to the writ. —SCHARDELOWE was of opinion that the Abbot should be held liable to acquit the plaintiff against all people.—And the whole of the rest of the COURT was, on the contrary, of opinion that he could not be so held on such a writ, even though he had previously bound himself to the acquittal against all people by a writ of covenant, for they said

deist plus. — Dortimore est en la ville de A.; juge- A.D. 1340.
ment de bref. — *Thorpe.* La fraunche chace en Dortimore put estre partie en la ville et partie hors de ville, tout soit la chace nome par tiel noun, &c.

§ *Transgressio,*[1] de ceo qil chacea en sa fraunche chace de A. —*Pole.* A. nest ville ne hamele; jugement du bref. — *Thorpe.* Ceo nest pas plee si vous ne diez qe A. est ville ou hamele. —Et issi semble a COURT. Transgressio. [Fitz. *Briefe* 284.]

(52.)[2] § Un bref de Meen fut porte devers Labbe de Nostre Dame Deverwik. — Et il counta qil tient del Abbe, &c., et qil luy deit aquiter vers toutz gens, et dit coment Sire Piers de Mauley le Quinter luy destreint pur homage. — *W. Thorpe.* Celuy Piers nad fee ne seignurie en ceste terre dount vous demandez lacquitance; jugement[3] de cesti bref. — *Rokel.* Voillez ceo pur respons? — *W. Thorpe.* Jeo luy voille pur tiel com il est; ditez vous[4] ceo qe vous voillez. — *Rokel.* Al comencement nous prioms qe[5] laquitance soit tenuz a neynt dedit de vous. — *Et non allocatur,* qar dit fuit qil ne[6] pleda mes al bref. — SCHARD. fuit de tiel entente qil serroit tenu[7] de luy aquiter vers totez gens.—*Et tota* CURIA en contre qe noun par tiel bref, mes qe lautre savoit[8] oblige al aquitance vers totes gens eynz par bref de covenant, qar ils disoient si[9] Meen.

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[1] This report of the case is from T. alone.

[2] From L., and 25184, as far as the point at which the larger type ends, but corrected by the record *Placita de Banco*, Mich., 14 Ed. III., R°. 372 d. It there appears that the action was brought by John, son of Thomas de Mounceaux, of Bernastone, in Holdernesse, against the Abbot of St. Mary's, York, to acquit the plaintiff of the services demanded of him by Peter de Mauley (Malo Lacu) le Quynter.

[3] jugement is not in L.

[4] vous is not in L.

[5] qe is not in L.

[6] ne is not in L.

[7] L., charge.

[8] L., soit.

[9] L., il dit qe, instead of ils disoint si.

A.D. 1340. that, if Peter had not seignory in these tenements, he who now brings this writ could discharge himself against him by plea, as by pleading *hors de son fee*.—Therefore *W. Thorpe* tendered the averment that Peter had not seignory as the writ supposed; ready, &c.[1]—And the other side said the contrary.—See a like issue taken, in Hilary Term in the twelfth year, on a like writ.[2]—And note:—*W. Thorpe* understood at first that *Rokell* had counted that the plaintiff had been distrained for his own homage, and said: — Sir, you see clearly how he supposes by the writ that the Abbot has a seignory mesne between him and Peter, and supposes by his count that the plaintiff himself ought to do homage to Peter, and that so he is without a mesne lord and is immediate tenant to Peter, and so his count discharges us of his writ; judgment of the count.—And this was not allowed, for the other said that he did not count in that manner, but that the plaintiff was distrained for homage.—And the COURT held that count good, for they said that they could not understand it otherwise than as to the effect that the plaintiff was distrained for the homage of him against whom the writ was brought. — See, as to the like matter, Easter Term in the fifth year,[3] &c.

Mesne. § Mesne. — *Blaik.* Whereas you suppose that we are mesne between you and B., we tell you that B. has neither fee nor seignory; ready, &c.; judgment of the writ. — *Kelshulle.* Ready, &c., that he has.—And it seemed to the COURT that the issue was good.

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[1] According to the record the Abbot pleaded that the tenements were "extra feodum et dominium "prædicti Petri." The plaintiff replied that they were within Peter's "feodum et dominium," and issue was joined thereon. The jury found that the tenements were not within Peter's fee and seignory, and judgment was given for the Abbot.

[2] *See* vol. Y. B., 11 and 12 Ed. III., p. 351 and p. 387.

[3] This may possibly be a reference to the case, Y. B., Easter, 4 Ed. III., No. 14, p. 19.

P. neit [1] mye seignurie [2] en ceux tenementz, celuy qore porte cesti bref se pout mesme descharger devers luy par plee, com a dire hors de son fee. — Par quei *W. Thorpe* [3] tendi daver avere qe P. navoit seignure com le bref suppose; prest, &c. — *Et alii e contra.* — *Vide* autiel issue pris *Hillarii xij. tali brevi.* — *Et nota:* [4] — *W. Thorpe* entendi primes qe *Rokel* ust conte qil ust este destreint pur son homage demene, et dit: —Sire, vous veiez bien coment il suppose par le bref qil ad [5] seignurie meen [6] entre luy et P., et [par son counte il suppose qe mesme doit faire homage a P.,] [7] issint sanz meen et tenant immediate, issint son counte nous [8] descharge de son bref; jugement de counte. — *Et non allocatur,* qar lautre dit qil na counte mye par la manere, eynz qil fuit destreint pur homage.— Et le COURT tient cel counte bon, qar ils disoient qils ne purreient [9] autre entendre mes qil fuit destreint pur lomage celuy vers qi le bref est porte.—*Vide de tali materia Paschæ quinto,* &c. A.D. 1340.

§ Mene.[10] — *Blayk.* Ou vous supposez qe nous sumes mene entre vous et B., nous vous dioms qe B. nad fee ne seignurie; prest, &c.; jugement du bref.—*Kels.* Prest, &c., qe si.—Et semble a la COURT qe lissu est bon. De Medio. [Fitz. *Mesne,* 9.]

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[1] L., nest.

[2] L., seignur.

[3] L., and 25184, *Rokel,* instead of *W. Thorpe.* But this must be a mistake, as *Rokell* was for the plaintiff.

[4] The words *Et nota* are not in 25184.

[5] L., qe al, instead of qil ad.

[6] 25184, menee.

[7] The words between brackets are not in 25184.

[8] The word nous is not in L.

[9] L., purrent, instead of ne purreient.

[10] This report of the case is from T. alone.

A.D. 1340. Quare impedit.

(53.) § *Quare impedit.*—The plaintiff was nonsuited; wherefore the defendant had a writ to the Bishop, and a writ to the Sheriff to enquire of the value of the church for damages.

Formedon in the Remainder.

(54.) § A writ of Formedon in the Remainder was brought against one J. Stevens and Alice his wife. J. made default after default. Alice was admitted, &c., and asked what the demandant had to show the remainder, &c.—*R. Thorpe.* You are admitted, &c., and that which you ask is not in defence of the land; wherefore, &c. —*W. Thorpe.* Then we pray that the Court record that you have no specialty. — *R. Thorpe* produced a deed which purported that one M. gave the same tenements to one Robert his son, and the heirs of his body issuing, and if he should die without such heir, the remainder to this plaintiff, &c. And the writ was in the words " which " M. de T. gave to Robert de T. his son, &c." And it was in accordance with the specialty.—*R. Thorpe.* Sir, you see clearly how our writ is brought against J. Stevens and Alice his wife, and she vouches J. the son of R. Stevens, who cannot be understood to be any other person than her own husband; wherefore we do not understand that, without showing cause, she ought to have this voucher. — SCHARDELOWE. You must say something more; else she will have the voucher. — *R. Thorpe.* Then, Sir, we say that this same person whom she vouches is her husband; judgment, &c., as above.— *W. Thorpe.* We tell you that in such a year, &c., a fine was levied between this same Alice and J. her husband, plaintiffs, and one R. de S., which R. is the same person to whom you suppose the gift to have been made, deforciant, by which fine J. acknowledged the tenements to be the right

(53.)[1] § *Quare impedit.* Le pleintif fust nounsuy; par quei le defendant ad bref al Evesqe, et bref a Viscounte denquerer de la valu del Eglise pur damages. A.D. 1340. Quare impedit. [Fitz. *Damage*, 93.]

(54.)[2] § Un bref de forme de doun en le[3] remeindre fuit porte vers un J. Stevens et A. sa femme. J. fist defaute apres defaute. Alice fuit resceu, &c., et demanda ceo qil avoit del[4] remeindre, &c. — *R. Thorpe.* Vous estez resceu, &c., et ceo qe vous demandez nest mye en defens de la terre; par quei, &c.—*W. Thorpe.* Donqes prioms nous qe la Court[5] recorde qe vous navez nul especialte. — *R. Thorpe,* myst avant un fait qe voleit qe un M. dona mesmes lez tenementz a un Robert *filio suo et heredibus*[6] *de corpore suo exeuntibus, et si obierit, &c.,* le remeindre a celuy pleintif, &c. Et tiel fuit le bref:—*quas M. de T. dedit Roberto de T. filio suo, &c.* Et acorda al especialte. — *R. Thorpe.* Sire, vous veiez bien coment nostre[7] bref est porte vers J. Stevens et A.[8] sa femme, et ele vouche J. le[9] fitz R. Stevens quel ne put estre entendu aultre persone mes soun baroun demene; par quei nentendoms mye qe, sanz cause moustrer, il deit cel voucher aver. — SCHARD. Il coveynt qe vous diez plus, ou ele[10] avera le voucher.—*R. Thorpe.* Sire, donqes dioms nous qe mesme celuy qele[11] vouche est son baron; jugement, &c., *ut supra.*—*W. Thorpe.* Nous vous dioms qe tiel an, &c., fyn se leva par entre mesme cesti Alice et J. son baron, pleignants, et un R. de S., quel R. est mesme celuy a qi vous supposez le doun estre fait, deforciant, par quele fyn J. conust Forme de doun en le remeindre. [Fitz. *Voucher*, 109.] [Fitz. *Estoppel*, 173.]

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[1] From T., and Harl. 741.

[2] From L., and 25184, as far as the point at which the larger type ends.

[3] le is not in L.

[4] L., de.

[5] Court is not in L.

[6] 25184, heredi.

[7] L., le.

[8] A. is not in L.

[9] le is not in L.

[10] 25184, il.

[11] L., qest.

A.D. 1340. of R., &c., for which acknowledgment R. granted and rendered the same tenements to J. and Alice his wife and to the heirs of their two bodies begotten, and bound himself and his heirs to warrant, &c. And we tell you that this J. is cousin and heir of R. de S., and for such cause we vouch him. (And *W. Thorpe* produced a part of the fine, and in the fine there was no warranty.)—*R. Thorpe.* All this may have been done when the parties were in seisin, and the fine is good enough as between the parties, but he who vouches for a cause ought to show transmutation of possession, and the tenant has not said that he who rendered was seised, wherefore we do not understand that he has said sufficient to have this voucher, for, if he would say that he who rendered was seised, to that we could have a traverse.—HILLARY. We understand by the render transmutation of possession, and if he who rendered was not seised, although the tenant has not mentioned his seisin, still you can traverse it; wherefore, &c. — *R. Thorpe.* Sir, this voucher is to the advantage of the husband as well as to the advantage of the wife, and the husband has lost by his default, as far as in him lies, wherefore we still do not understand that you will permit this voucher.—SCHARDELOWE. She shall not be ousted of her warranty through his default, and, when she has recovered over to the value, she shall hold this land of like value in the like estate to that in which she held the first land.—*R. Thorpe.* There is no warranty in the fine as the tenant has himself shown; wherefore we still do not understand that such a fine gives this voucher. — ALDEBURGH. That is nothing at all to you, for that will be a plea in the mouth of the vouchee, when he comes, to escape from

&c., estre le dreit R.,[1] &c., pur quele conisance R. granta et rendi mesmes lez tenementz a J. et Alice sa femme et a lez heirez de lour[2] ij. corps engendrez, et obligea luy et ses heires de garrantir, &c. Et vous dioms qe cesti J. est cosyn et heire R. de S., et par tiel cause nous luy vouchoms. Et il moustra avant partie de la fyn, et en la fyn il ny avoit[3] mye garranti. — *R. Thorpe.* Tot ceo cy[4] puit estre fait en seisine, et entre lez partiez le fyn est assetz bon, mesqe cely qe vouche par cause deit moustrer[5] transmutacion de possession, et il nad my dit qe celuy qe rendi fut seisi, par quei nentendoms mye qil ad assez dit daver ceo voucher, qar, sil voleit dire qil fut seisi, a cella nous purroms aver traverse. — HILL. Nous entendoms par le rendre transmutacion de possession, et si celuy qe rendi ne fut mye seisi, coment qil nad my moustre sa[6] seisine, unqore vous le poiz transverser; par quei, &c. — *R. Thorpe.* Sire,[7] ceo voucher chiet en avantage le baron auxi[8] avant com en avantage[9] la femme, et il ad perdu par sa defaute, tant quen[10] luy est, par quei nentendoms mye unqore qe vous volez ceo voucher seoffrer. — SCHARD. Par sa defaute ele ne serra mye ouste de sa garrantie, et, quant ele ad recovery a la value, ele tendra cele terre en value en autiel estat com la primere terre.—*R. Thorpe.* Il ny ad[11] mye garrantie en la fyn en ceo qil ad mesme moustre; par quei nentendoms mye unqore qe tiel fyn doune ceo voucher. — ALD. Ceo nest nul rien a vous, qar se serroit plee en la bouche[12] le vouche, quant il A.D. 1340.

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[1] 25184, Richard.
[2] L., lez.
[3] L., ne navoit, instead of ny avoit.
[4] cy is not in L.
[5] L., moustre, instead of deit moustrer.
[6] sa is not in L.
[7] Sire is not in 25184.
[8] auxi is not in 25184.
[9] 25184, lavantage.
[10] 25184, quanque, instead of tant qeu.
[11] L., nad, instead of ny ad.
[12] The words la bouche are not in L.

A.D. 1340. the warranty; and in the present case there was no necessity for the tenant to show the fine; wherefore you must say something else. — *R. Thorpe.* Then, Sir, we say that this R. de S., whom he supposes to have rendered by this fine, was a bastard, and so he could not have any collateral heir; judgment, &c. — *W. Thorpe.* You shall not be admitted to that, for we say, as before, that he is the same person to whom you suppose the gift to have been made, and by your own writ and suit you have given him a father, for you name him in the words *filio suo;* judgment, &c. — *R. Thorpe.* That naming shall not harm me, for I have named him according to the specialty which proves my action, and in such a case I was compelled by law to name him in that manner; and we have seen one name another in that manner, and then afterwards bastardise him. — WILLOUGHBY. Perhaps that was upon another writ, but upon the same writ you never saw that; but, on the contrary, we have seen in this Court, upon a writ of Entry *sur disseisin,* one precluded from bastardising a person by reason of having named him in such a manner. As to your first statement, suppose this R. de S. was named "son" [in the specialty] no law would compel you to name him "son" elsewhere, even though he was made "son" by the specialty; wherefore, &c.—*R. Thorpe.* He was born before the marriage; ready, &c.; judgment, &c., as above. — WILLOUGHBY. This is nothing but a statement in proof of the other issue, from which you are ousted by judgment, &c.—*R. Thorpe.* Sir, it appears to us now that we have said enough to deprive her of the voucher, and thereof we demand judgment. — HILLARY. Then let the voucher stand. — And note:—if the last issue had been taken, it would have been tried in this Court, because R. is dead, and on the truth being found thereupon according to the law of the land, R.

vendra, destourtre de[1] la garrantie; et en ceo cas yci A.D. 1340.
il nust mye bosoigne qil ust[2] moustre la fyn; par quei il coveynt qe vous diez autre chose.—*R. Thorpe.* Sire, donqes dioms nous qe celuy R. de S. qil suppose qe rendi par la fyn si fuit bastard, issint ne put il heire collateral aver; jugement, &c. — *W. Thorpe.* A ceo navendrez vous mye, qar nous dioms, com devant, qil est mesme la persone a qi vous supposez le doune estre fait, et par vostre bref et vostre suyte demene vous luy avez done pere, qar vous le nomez *filio suo;* jugement, &c.—*R. Thorpe.* Cel nomer ne moy grevera pas, qar jeo lay[3] nome acordant al especialte qe prove maccion, en quel cas jeo fu[4] arte par ley de luy nomer par le manere; et nous avoms veuw un homme nomer un autre par la manere et pus apres luy ad bastarde. —Wiluby. Par cas ceo fuit en un autre bref, mes en mesme le bref vous nel veistez unqes; mes nous lavoms veu cienz en un bref dentre sour disseisine par reson de tiel nomer estre forclos de luy bastarder. A vostre primer dit jeo pose qe celuy R. de S. fuit nome[5] fitz, nully ley ne vous artereit de luy nomer[6] fitz a autre[7] coment qil fut fait fitz par lespecialte; par quei, &c. —*R. Thorpe.* Il nasquit devant lez esposales;[8] prest, &c.; jugement, &c., *ut supra.*—Wiluby. Ceo nest autre rien mes a prover lautre issue,[9] de quel vous estez oste par agarde, &c.—*R. Thorpe.* Sire, il nous semble ore qe nous avoms ditez assetz pur luy toller[10] le voucher, et de ceo nous demandoms jugement.[11]—Hill. Estoise donqes le voucher.—*Et nota:*—si le dreyn issue ust este pris, ceo ust este trie cienz, pur ceo qe R. est mort, et sour ceo verite trove solonc la ley de terre il[12]

[1] 25184, deforcer a, instead of destourtre de.
[2] ust is not in L.
[3] 25184, lui.
[4] L., su, instead of jeo fu.
[5] 25184, mon.
[6] 25184, moner.
[7] L., lautre.
[8] L., sposales.
[9] 25184, lissue.
[10] 25184, tollir.
[11] 25184, voz jugement.
[12] 25184, et il.

A.D. 1340. would have been adjudged a bastard, and so this issue was only to the same effect as the first.

Formedon. § Formedon in the Remainder (on a gift made by A. to J. his son, &c., remainder over) brought against a man and his wife. And the wife, having been admitted, vouched her husband for this cause that her husband acknowledged by fine the tenements to be the right of one J., and J. rendered back to her husband and her, &c., and her husband was cousin and heir of this J. who rendered.—And there was no warranty in the fine, but no stress was laid on that fact. — *Pole.* J. was a bastard, so he could not have an heir except of his body, and that he had not.—And it seemed to the COURT that he should have that plea, to defeat the cause of the voucher. — *Thorpe.* J. was the same person to whom the gift is supposed to have been made, and the demandant has called him the son of A. by the writ; judgment whether to bastardise him, &c. — And it seemed to the COURT that the demandant should not be admitted to bastardise him.—Therefore the voucher was adjudged good.—And the fine was levied in D. which is a hamlet of the vill where the writ is now brought.

Nisi prius. (55.) § *Nisi prius.* One answered as attorney for the demandant; and the inquest passed for him; and the matter was adjourned into the Bench. The tenant alleged that he who answered for the demandant was not his attorney. And yet seisin of the land was awarded, because he was previously accepted as attorney in the plea.

Nisi prius. (56.) § At *Nisi prius* the inquest passed for the tenant. And in the Bench the demandant was non-suited. The tenant prayed judgment on the verdict.

Trespass. (57.) § Upon a writ of Trespass one was found guilty. Thereupon a writ issued at the suit of the King to take his body in order that he might make a fine to the King, &c.—Now the Sheriff returned the writ "*non est*

serra ajugge bastard, issint ne fust cele issue mes de mesme leffecte com[1] fuit le primer, &c. A.D. 1340.

§ Remeyndre,[2] dun doun fait par[3] A. a[4] J. son fitz, &c., le remeyndre outre, porte vers un homme et sa femme. Et la femme resceu voucha son baroun par cel[5] cause pur ceo qe son baroun conust par fyne les tenementz estre le dreit un J., et J. rendy arere a son baron et lui, &c., et son baroun est cosyn et heir celui J.[6] qe rendy. — Et il[7] ny ad pas garrantie en la fyne, mes ceo nest pas chargè. — *Pole.* J. fust bastard, issi qil ne poet aver heir si de son corps noun, et ceo[8] navoit il pas. — Et semble a la COURT qil avera cel[9] plee a defaire la cause del voucher. — *Thorpe.* J. fust mesme la persone a qi le doun est suppose mesme estre fet, et il lad nome fitz[10] A. par bref; jugement si de lui bastarder, &c. — Et semble a la COURT qil ne serra pas resceu. — Par quei le voucher fust agarde bon. — Et la fyne fust leve en D. qest hamele de la ville ou le bref est porte ore.[11] Forma donationis.

(55.)[12] § *Nisi prius.* Un respondi par attourne pur le demandant; et lenquest passa pur lui; et ajourne en Bank. Le tenant aleggea qe celui qe respondi pur lui qest demandant ne fust pas attourne. *Et tamen* seisine de terre fust agarde [pur ceo qe devant el plee il fust come attourne accepte].[13] Nisi prius.

(56.)[14] § *Nisi prius.* Enquest passa pur le tenant. Et en Bank demandant est nounsuy. Le tenant pria jugement sur verdist. Nisi prius.

(57.)[15] § En un bref de trespas un fuit trove coupable, par quei bref issit a la suyte le Roy de prendre son corps pur faire fyn au Roi, &c.—Ore le Vicounte Trespas.

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[1] 25184, qe ne.

[2] This report or abridgment of the case is from T., and Harl. 741.

[3] Harl., a.

[4] Harl., et.

[5] T., tiel.

[6] Harl., a celui, instead of celui J.

[7] T., y.

[8] T., si.

[9] Harl., tiel.

[10] Harl., frere.

[11] There is also another abridgment of this case, distinct from the above, in Harl. 741.

[12] From T., and Harl. 741.

[13] The words between brackets are not in Harl.

[14] From T., and Harl. 741.

[15] From L., and 25184, as far as the point at which the larger type ends.

A.D. 1340. *inventus*," &c.—*Stouford*, for the King, prayed the Exigent.—WILLOUGHBY. In this Court you shall not have the Exigent yet, but in the King's Bench, perhaps, you would have it.—*Stouford.* Sir, he is found guilty of the trespass, wherefore we understand that in order to speed the suit of the King, we shall have the Exigent.—WILLOUGHBY. You shall not yet have anything but the *Alias capias* in this case. (And he directed that the award of the *Alias capias* should be entered.) And at the return of the *Pluries capias* you shall have your prayer granted, but not before; wherefore, &c.

Trespass. § Trespass. The defendant was found guilty. The *Capias* issued. The Sheriff returned "*non est inventus.*"—*Stouford.* We pray an Exigent for the King.—And he could not have it before the return of the *Pluries capias.* But in case of the death of a man, the Exigent may be had in the King's Bench, on the return of the first *Capias.*[1]

Quare impedit. (58.) § Robert de Willoughby brought a writ of *Quare impedit* against Richard de Mandeville and William Casse, and counted against them that the advowson was appendant to certain tenements, and that one William his ancestor was seised and presented in the time of King Richard, and alleged divers subsequent presentations and parsons presented by guardians, and counted at the last that one was presented by a guardian, after whose death the church was now vacant.—*Pole.* Since you counted against us W. Casse has died; judgment of the writ.—*Thorpe.* This writ is a writ of a trespass, in which case the writ is good as long as there is one trespasser living, for each shall answer without the other.—*Pole.* This writ touches right and realty, wherefore the death of one abates the writ.—SCHARSHULLE. If W. Casse had claimed anything in the advowson, and the plaintiff had accepted him as a claimant, perhaps the reason you give would

[1] There is also another very short abridgment of this case, distinct from the above, in Harl. 741.

returna le bref *quod*[1] *non est inventus*, &c.—*Stouff.*, pur le Roy, pria lexigende.—WILUGBY. En ceste place yci vous nel averez pas unqore, mes en Bank le Roy par cas vous laverez.—*Stouff.* Sire,[2] il est atteynt[3] du[4] trespas, par quei nous entendoms qe, de hastier la suyte le Roi, nous averoms lexigende.—WILUGBY. Vous naverez autre rien unqore[5] mes *Capias sicut alias* en ceo cas. (Et commanda de lentrer.) Et a le *Capias sicut pluries* retourne,[6] vous averez vostre priere, et nyent devaunt; par quei,[7] &c. A.D. 1340.

§ Trespas.[8] Le defendant fust atteint. *Capias*[9] issit. Le Vicounte retourna *Non est inventus.*—*Stouf.* Nous prioms[10] exigende pur le Roi.—Et ceo nè[11] poet il aver devant le *Capias sicut pluries* soit retourne. Mes en cas[12] de mort de homme en Bank le Roi homme avera al primer *Capias*.[9] Trespas. [Fitz. *Exigent*, 18.]

(58.)[13] § Robert de Wilby porta bref de *Quare impedit* vers Richard [de] Mandeville et William Casse, et counta vers eux qe lavowesoun fu appendant a certeinz tenementz, et qun William soun auncestre fu seisi et presenta en temps le Roi Richard, et pus alleggea devers presentements et persones de gardeinz, et counta a drein qun fu presente par un gardein, apres qi mort leglise est voide.—*Pole.* Pus qe vous countastes vers nous W. Casse est mort; jugement de bref.—*Thorpe.* Ceo bref est de trespas, ou le bref est bon tant com il ad un trespasour et vie, qar chescun respondra sanz autre.—*Pole.* Ceo bref touche dreit et reialte, par quei mort dun abate le bref.—SCHR. Si W. Casse ust clame en lavowesoun, et le pleintif le ust accepte, par cas vostre resoun liereit, et ne pur Quare impedit.

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[1] L., qe, instead of le bref *quod*.
[2] Sire is not in 25184.
[3] L., attient.
[4] 25184, de
[5] unqore is not in 25184.
[6] L., returne, *ut supra*.
[7] L., qai.
[8] This report of the case is from T., and Harl. 741.
[9] Harl., *Cape*.
[10] Harl., prioms pur ceo.
[11] ne is not in Harl.
[12] The words en cas are not in T.
[13] From Harl. 741 alone, as far as the point at which the larger type ends, but corrected by the record, *Placita de Banco*, Mich., 14 Ed. III., R°. 357.

A.D. 1340. be binding, but nevertheless the other who is named may claim something in the same advowson afterwards, and so far the writ is good.—Therefore the exception was not allowed.—*Pole.* You have counted of a presentation in the time of King Richard, which is beyond the time of limitation for this possessory writ.—SCHARSHULLE This writ is not subject to limitation; therefore answer.—*Pole.* He has counted that the church is vacant after the death of one T., a presentee, whereas it may be that other persons presented came to it afterwards, and such a count is not good for any one except the King; judgment.—SCHARSHULLE. Though the church be now vacant through his death, that fact does not disprove that it is vacant after his death; wherefore answer.—Afterwards Richard alleged four last presentations in abatement of the writ, and the plaintiff was compelled to answer as to all; and some he avoided on the grouud of the non-age of his father, and some on the ground of the non-age of his grandfather. And Richard said that, at the time of the last presentation alleged, the plaintiff's father was of full age.—And so to the country.

Quare impedit.

§ *Quare impedit* against Casse and others.—*Pole.* W. Casse is dead; judgment of the writ.—This exception was not allowed.—*Pole.* He takes his title from a presentation made in the time of King Richard, and a possessory writ does not lie in respect of so remote a time; judgment.—This exception was not allowed, because the writ of *Quare impedit* is without limitation.—*Pole* alleged many presentations by defendant's ancestors, &c.; judgment whether to this possessory writ, &c.—*Gayneford* avoided the presentations; and issue was taken.

Quare impedit for tenant in dower.

(59.) § Margery, who had been the wife of John de Halton, brought a *Quare impedit* against Nicholas

quant sanz pout lautre qest nome clamer en mesme lavowesoun apres, et par tant le bref boun.—*Ideo* excepcion *non allocatur.*—*Pole.* Vous avez counte de presentement en temps le Roi Richard, qe passe la limitacion de ceo bref de possession; jugement de bref.—SCHR. Ceo bref ne porte pas limitacion; par quei responez.—*Pole.* Il ad counte qe apres la mort un T. presente qe leglise est voide, ou pout estre qil vint autres persones pressentes pus, ou tiel count nest pas boun pur nul homme sauf pur le Roy; jugement. —SCHR. Tout soit leglise ore void par sa mort ceo ne desprove pas qele nest voide pus sa mort; par quei responez.—Pus Richard alleggea iiij. presentements dreinz en abatement de bref, et le pleintif fu chase a respondre a touz, et voida ascunes par noun age soun pere et ascunes par noun age soun ael. Et Richard dist qe le pere le pleintif al temps de le drein presentement allege qil fu de plein age.—*Et sic ad patriam.*[1] A.D. 1340.

§ *Quare impedit*[2] vers Casse et autres.—*Pole.* W. Casse est mort; jugement du bref.—*Non allocatur.*—*Pole.* Il prent son title dun presentement en temps le Roi Richard, et bref de possession ne gist pas de si haut temps; jugement.—*Non allocatur*, qar ceo bref est saunz lymytacion.—*Pole* alegea mout de presentements par ses auncestres, &c.; jugement si a ceo bref de possession, &c.—*Gayn.* les voida, et lissue fust pris. Quare impedit.

(59.)[3] § Margeric, qe fuy la femme Johan de Halton, porta *Quare impedit* vers Nicolas Inkepenne,[4] qe a Quare impedit pur tenant en dower.

[1] The jury found that the plaintiff's father was under age at the time of the presentation, and judgment was given for the plaintiff, as appears by the record. The pleading as to limitation does not appear upon the roll.

[2] This report of the case is from T. alone.

[3] From Harl. 741 alone, as far as the point at which the larger type ends. The report appears to refer to the case of which the commencement occurs as No. 58 in Easter Term, 14 Ed. III., and has been corrected by the record of that case, *Placita de Banco*, Easter, 14 Ed. III., R°. 173.

[4] Harl., Johan Ingpenne et Johane sa femme, instead of Nicolas Inkepenne.

A.D. 1340. Inkepenne, for that he tortiously disturbed her from presenting, &c., to the church of Saint Dominick, &c., and alleged as the ground of her action that one Ralph de Halton was seised of the manor of Halton, to which the advowsons of this church, and of the church of Pillaton, and of the church of Dydesham are appendant, and that he presented to this church, &c. From Ralph the manor, &c., descended to John, formerly husband of Margery, the plaintiff, as son. This John was under age and in the wardship of Thomas Ercedekene, which Thomas assigned to Joan, who was the wife of Ralph, the third part of the manor, together with the advowson of the church of Pillaton, in allowance for the advowsons of the other churches, to hold in dower. Afterwards John, the husband of this Margery, died, whereby two parts of the manor, with the two advowsons [of Saint Dominick and Dydesham], descended to Joan,[1] who is now the wife of Nicholas Inkepenne, and she was under age and in the wardship of Thomas Ercedekene, who assigned to this Margery the third part of the two parts of the manor aforesaid, together with the third part of the advowson of Saint Dominick to present at every third vacancy. Afterwards the church became vacant, whereupon the said Thomas, in the right of Joan, presented one T., &c. And afterwards the church became vacant, whereupon Joan, being then of full age, presented one S., by reason of whose death the church is now vacant. So it belongs, &c.—*Pole.* Whereas you have counted that the three advowsons are appendant to the manor of Halton, we say that there is no advowson appendant to it ex-

[1] The rest of the count or declaration requires correction. According to the record this Joan, daughter of John, married Roger de Inkepenne, who assigned to Margaret in dower the third part of two parts of the manor, together with a third part of the advowsons of the churches of St. Dominick and Dydesham. Roger and Joan presented once, and her second husband, Robert Bendyn, and she presented a second time, to the church of St. Dominick, and so Margery claimed to present upon the third vacancy which had now occurred.

tort la destourbe presenter, &c., al eglise de Seynt Dominik,[1] &c., par la resoun qun Rauf de Haltone fu seisi de manere de Haltone, a qi lavowesoun de cest eglise et del eglise de Pyletone[2] et del eglise de Dydesham[3] sount appendants, qi presenta a cest eglise, &c. De Rauf descendi, &c., a Johan jadis baron cest Margerie com a fitz, le quel Johan fu deinz age et en la garde Thomas Lercedekne,[4] le quel Thomas assigna la terce partie du manere a Johane[5] qe fu la femme Rauf od lavowesoun de Pyletone,[6] en allowance des autres, a tener en dower. Pus morust Johan baron cest Margerie, par quei les ij. parties du manere ov les deux avowesouns descendirent a Johane qest ore la femme Nicolas Inkepenne qe fu deinz age et en la garde Thomas Lercedekne[4] qi assigna a cest Margerie le terce partie des ij. parties du manere avant dit od la tierce partie de lavowesoun de Seynt D. a presenter a chescun terce voidaunce. Pus leglise se voida, par quei le dit Thomas, en le dreit Johane,[7] presenta un T., &c. Et pus leglise se voida, par quei Johane, adonqes de plein age, presenta un S., par qi mort leglise est ore void. Issint appent, &c.—*Pole.* La ou vous avez counte qe les iij. avowesouns sount appendants a le manere de Halton la dioms qil nayd nul A.D. 1340.

[1] Harl., Dynik.
[2] Harl., Baltone.
[3] Harl., L.
[4] Harl., Ercedeken.
[5] Harl., Alice. This name appears to have been substituted for the purpose of avoiding confusion between the two Joans.
[6] Harl., Biltone.
[7] Harl., Is.

A.D. 1340. cept that of the church of Saint Dominick, and we tell you that it is very true that Ralph was seised of the manor of Halton and of this advowson appendant to it, and that after his death the third part of the manor of Halton, with the third part of the advowson of Saint Dominick (to present on every third vacancy), was assigned to Joan, who was the wife of Ralph, to hold in dower. Afterwards John (son and heir of Ralph), who was the husband of this Margery, died, whereupon the third part of the two parts of the manor was assigned to this Margery, with the proportionate part of the advowson (to present on such vacancy as should fall in turn to that portion). And now Joan, who was the wife of Ralph, is dead, wherefore her dower has accrued to us. And you have admitted that this is the third vacancy since the death of your husband, whose heir Joan was [Nicholas being the son and heir of Joan, the daughter of John],[1] and so it belongs to us to present; judgment, &c.—*R. Thorpe.* Whereas you say that the third part of the advowson of Saint Dominick was assigned to Joan [late wife of Ralph] in dower, we say that the advowson of the church of Pillaton was assigned to her in allowance, &c., and not the third part of the church of Saint Dominick; ready to verify.—*Stouford.* You do not deny our statement that there was no advowson appendant to the manor except that of the church of Saint Dominick, so that, of common right, she could not have had dower as appendant to the third part of the manor except the third part of the advowson of the church of Saint Dominick. —*Thorpe.* Whether the other advowsons were appendant or not, an advowson which is in gross could be assigned in dower in allowance, &c., and we have tendered an averment thereon which you refuse; judgment, &c.—*Stouford.* A guardian ought not to assign in

[1] The words between brackets have been inserted as being necessary for the comprehension of the case, and in accordance with the corresponding part of the record.

avowesoun appendant fors del eglise de Seynt Dominik,[1] et vous dioms qe bien est verite qe Rauf fu seisi du manere de H. et de cel avowesoun appendant, apres qi mort la tierce partie du manere de H. od la terce partie de lavowesoun de Seynt Dominik,[1] a presenter a chescun tierce voidance, furent assignez a Johane[2] qe fu la femme Rauf a tener en dower. Pus morust Johan fitz et heir Rauf qe fu baron cest Margerie, par quei la terce partie des ij. parties du manere fut assigne a cest M. od la porcion de lavowesoun a presenter a tiel voidance afferrint a porcion. Et ore Johane[2] qe fu la femme Rauf est mort, par quei soun dower est acru a nous. Et vous avez conu qe ceo est la terce voidance pus la mort vostre baron qi heir Johane est, issint appendant a nous a presenter; jugement, &c.—*R. Thorpe.* Ou vous ditez qe la tierce partie de lavowesoun de Seint D. fu assigne a Johane[2] en dower, la dioms nous qe lavowesoun de leglise de Pyletone[3] fu assigne a ly en allowance, &c., et ne mye a la terce partie de lavowesoun del eglise de Seint D.; prest daverer.—*Stouf.* Vous ne deditez pas qil ny avoit nul autre avowesoun appendant al manere fors del eglise de Seint D., ou de comune dreit el ne put aver en dower com appendant a la tierce partie du manere fors la tierce partie lavowesoun de Seint D.—*Thorpe.* Le quel les autres avowesouns furent appendants ou nient, un avowesoun qest un gros put estre assigne en dower en allowance, &c., et nous avoms entendu avere quel vous refusez; jugement, &c. — *Stouf.* Gardein ne A.D. 1340.

[1] Harl., Doynyk.
[2] Harl., Alice.
[3] Harl., B.

A.D. 1340. dower anything other than that which common right gives, and, if he do, the heir can revoke it, and, in this case, he has no means of revocation except by presentation.—Afterwards they were at issue as to whether the advowson of the church of Saint Dominick was assigned, &c.—So to the country.[1]

Quare impedit. § *Quare impedit* for a woman, who said that her husband was seised of a manor to which three advowsons were appendant, and that he presented, and said that the advowson of B. was assigned to one A., wife of J., her husband's father, for the whole of A.'s dower, and said that the third part of the manor was assigned to her, &c., together with the third part of this advowson, so that she should present on the third vacancy, &c.—*Pole.* The third part, &c., was assigned to one Alice, the wife of J., the father of the demandant's husband, on a higher endowment. And he said that A. presented after the assignment made to this woman; afterwards Alice died, and after Alice's death he only presented twice, and thereby it belongs to him to present, because Alice's turn, by her death, reverted to him.—*Gayneford.* We tell you that another advowson, namely, that of B., was assigned to Alice in allowance of her dower, without this, that the third part of this advowson was assigned; ready, &c.—And the other side said the contrary.

Detinue of a writing. (60.) § Upon a writ of Detinue in respect of a writing obligatory[2] which the plaintiff delivered (for re-delivery) upon a certain condition, he said that the condition was fulfilled. — *Kelshulle.* You and another delivered the writing to me, on a condition other than that stated, and we do not know whether this condition is, in fact, fulfilled, and we pray a writ to warn the other.—*Rokell.* You speak of another condition, but show nothing in proof of it; wherefore we have no need to answer to

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[1] The jury found that the advowson of the church of Pyleton was assigned to Joan, the widow of Ralph de Halton, in dower, according to the plaintiff's contention, and not the third part of the advowson of the church of St. Dominick, as the defendant Nicholas contended. Judgment was given for the plaintiff.

[2] According to the record there were two *scripta* delivered, a "*scriptum obligatorium*" and a *scriptum acquietantiæ*.

doit assigner en dower fors ceo qe comune dreit done, et, sil face, le heir le poet repeler, et, en ceo cas, il nad autre repeler fors par presentement.—Pus il furent a issu si lavowesoun del eglise de Seint D. fut assigne, &c.—*Sic ad patriam.* A.D. 1340.

§ *Quare impedit*[1] pur une femme, qe dit qe son baroun fust seisi dun manere a qi iij. avoesouns furent appendantz, et presenta, et dit coment lavoesoun de B. fust assigne a une A. femme J. pere son baroun pur tout son dower, et dit qe la terce partie de manere fust assigne a lui, &c., ensemblement ove la terce partie de ceste avoesoun, a presenter a la terce voidaunce, &c.—*Pole.* La terce partie, &c., fust assigne a une Alice la femme J. pere son baroun qore demande de pluis haut dowement. Et dit qe A. presenta apres lassignement fait a ceste femme; puis Alice morust, et apres la mort Alice il ne presenta qe ij. foitz, et par taunt apent a lui a presenter, pur ceo qe le tourn Alice par sa mort a lui est arevertu.—*Gayn.* Nous vous dioms qun autre avoesoun, saver de B., fust assigne a Alice en alowaunce de son dower, saunz ceo qe la terce partie de ceste avoesoun la fust assigne; prest, &c.—*Et alii e contra.* Quare impedit.

(60.)[2] § En[3] bref de[4] detenue dun escripte obligatorie qele le pleintif bailla, a rebailler, sour certyn[5] condicion, et il dit qe la condicion fuit parempli.—*Kels.* Vous et un altre moy baillerent escript, et par un altre condicion, et nous ne savoms mye si cel condicion soit ja acompli,[6] et prioms bref de garnir luy.—*Rokell.* Vous parlez daultre condicion, et de ceo vous ne moustrez rien; par quei, &c., a Detenue descripte.

[1] This report of the case is from T. alone.

[2] From L., and 25184, as far as the point at which the larger type ends, but corrected by the record *Placita de Banco*, Michaelmas, 14 Ed. III., R°. 417. It there appears that the action was brought by William de Sprotford of Great Abyton (Essex) against William Molle of Little Samford.

[3] L., Un.

[4] de is not in L.

[5] L., sour condicion, instead of a rebailler sour certeyn condicion.

[6] L., ja compli; 25184, acompli, instead of ja acompli.

A.D. 1340. you, &c. — SCHARDELOWE. He traverses your writ; wherefore it is necessary that you maintain it.—And so he did, for in this case, inasmuch as he denies the condition, garnishment does not lie.

Detinue of a writing. § Detinue of a writing delivered on a certain condition. The defendant said that the writing was delivered to him by the plaintiff and others on a different condition, and prayed that the others might be warned. And because the count was traversed as to the condition, they were at issue thereupon.

Replevin against two persons, where one said that she did not take, and the other made cognisance as her bailiff.

(61.) § R. Prior of Pontefract brought a Replevin against Alice de Boseville.—*Gayneford.* Alice did not take, and William acknowledges the taking, as bailiff of Alice de Boseville and one Joan Souley, for the reason that the place, &c., is waste of the vill of M., of which vill Alice and Joan have the seignory, that is to say, Alice of two parts and Joan of the third part, and the waste is their soil in that manner, and he found the Prior's beasts driven out of the vill of L., whereas the vills do not intercommon, and so he took them for damage feasant.—*Pole.* Sir, you have heard how Alice has denied the taking, and William has acknowledged the taking as bailiff of one Alice who is the same person that has denied the same taking; judgment whether he shall be admitted to make such a cognisance. And as to Alice's denial of the taking we will aver our writ against her.—*Gayneford.* William shall not be ousted from his answer by Alice's plea, and particularly since he has, as one and the same person, made cognisance as bailiff of Alice and as bailiff of another.—Afterwards *Pole* waived his exception [and said] that the place in which the taking was effected is a great moor, and that the two parts are the soil of the Prior, and that the taking was effected within these two parts; ready, &c.

Replevin. § The Prior of Pontefract complained that one Alice de B. and J. de S. tortiously took her beasts, to wit, 100 sheep, &c.—

vous navoms mester a respoundre, &c. — SCHARD. Il traverse vostre bref ; par quei il covent que vous le meyntenez.—*Et sic fecit,* qar en ceo[1] cas, ou il dedit la condicion, garnissement ne gist mye. A.D. 1340.

§ Detenue[2] dun escript[3] sour[4] certeine condicion. Le defendant dit qe lescript lui fust baille par lui et autres, et sur autre condicion, et pria qe les autres fussent garnys. Et pur ceo qe le counte sur la condicion est traverse, sur ceo[5] il sont a issu. Detenu descrit.

(61.)[6] § R. Priour de Pounfreit *replegiari* vers Alice de Boseville.—*Gayn.* Alice ne prist pas, et William conoit la prise, com baille Alice de Boseville et unc Johane Souley, par la resoun qe le lieu, &c., est wast de la ville de M. le quel ville Alice et J. sount seignurs, saver Alice de la ij. parties et J. de la tierc partie, et la wast lour soil par la manere, et il trova les bestes le Priour chaces hors de la ville de L., ou les villes ne se entre-comunent pas, issint les prist il pur damage fesaunt.—*Pole.* Sir, vous avez entendu com Alice ad dedit la prise, et William ad conu la prise com baille un Alice qest mesme la persone qe ad dedit mesme la prise ; jugement si a tel conisance serra il resceu. Et quant a ceo qe Alice ad dedit la prise vers ly voloms averer nostre bref.—*Gayn.* William ne serra pas ouste de soun respons par le plee Alice, et nomement depus qil ad conu com baille Alice et com baille un autre com un mesme persone.—Pus *Pole* wayva soun chalenge qe le lieu ou la prise fut fait est un grant more et les ij. parties sount le soil le Priour, et la prise fu fait en cele ij. parties ; prest, &c. Replegiari vers deux, ou lun dit qil ne prist point, et lautre conust com bailife mesme celi.

§ Le[7] Priour de Pounfreit se pleint qe une Alice de B. et J. de S. atort pristrent sez avers, nomement c. motons, &c.—*Gayn.*, Replegiari.

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[1] ceo is not in Harl.

[2] This report of the case is from T., and Harl. 741.

[3] T., descript, instead of dun escript.

[4] T., pur.

[5] Harl., ce, instead of sur ceo.

[6] From Harl. 741 alone, as far as the point at which the larger type ends.

[7] This report of the case is from L., and 25184.

A.D. 1340. *Gayneford*, for Alice, denied the taking, and for J. acknowledged the taking as bailiff of one Alice de B., and Katharine de B., for damage feasant.—*Pole.* This same Alice on behalf of whom you avow is the same person that has denied the taking, so that, if she were to be joined in aid on an aid-prayer, she would never be able to justify this taking; wherefore we do not understand that such a cognisance lies on behalf of Alice. —*Gayneford.* We have not said that she is the same person, &c., but we have made cognisance [as bailiff] on behalf of Alice and of another, in which case even though Alice might be willing to admit that the taking was tortious, the other might well justify it. (And to this the COURT agreed.) And since it is a personal act that you surmise against us, and we have excused ourselves, we demand judgment, &c.—*Pole.* If you had prayed aid of A. and she had come and disavowed the taking, we understand that you would have been convicted; the argument is just as strong in this case.—SCHARDELOWE. You understand wrongly, &c.

Replevin. § Replevin against Alice and J.—Alice said that she did not take the beasts. J. acknowledged the taking, as bailiff of Alice and of one R., in their several, damage feasant.—*Pole.* This Alice on whose behalf you acknowledge the taking [by bailiff] is the same person as she who has denied the taking, so that on her behalf you cannot make cognisance; for if she were prayed in aid and did not come, you would be convicted. (This, however, was denied.) And in this case, because she is a party, she shall not be prayed in aid. — HILLARY. It is not right that the plea of one should oust others from their advantages; for in a Replevin brought against two persons, if one deny the taking, and the other avow and acknowledge for him who has denied, still the avowry will not abate. — SCHARDELOWE. He has made cognisance for another who is not a party, wherefore his matter is better, and he can have a Return for the other who is not a party; and if he had made cognisance for her who is party [alone] and who has denied the taking, he would not have the Return. —*Pole.* We tell you that the place where the taking was effected is our several demesne; judgment whether he can avow the distress there.—*Gayneford.* It is the several of R. and A.; ready, &c.—And the other side said the contrary.

Dower. (62.) § Dower, where the heir of the husband, being in the wardship of one J., was vouched in one county, and

pur Alice, dedit la prise, et [pur J. conust la prise] [1] com baillif un Alice de B. et Katerine de B., pur damage fesaunt.—*Pole.* Mesme ceste Alice, pur qui vous avowez [2] si est mesme la persone qad [3] dedit la prise, issint que sy par eyde prier ele se [4] joynsist ele ne purra jammes ceste prise [5] justifier; par quei nentendoms mye qe tiel conisance pur Alice ygise. —*Gayn.* Nous navoms mye dit qele est [6] mesme la persone [7] [&c., mes nous avoms conu, pur Alice et pur un autre, ou, mesqe Alice voudra conustre la prise] [8] torcenouse, lautre la purra bien justifier. (*Et ad hoc consensit* Curia.) Et del houre qe cest un personel fait quel vous nous [9] surmettez, et nous avoms excusez, nous demandoms jugement, &c.—*Pole.* Si vous ussetz prie eide de [10] A., et ele ust venu et desavowe la prise, nous entendoms qe vous ussetz este atteynt; auxi fort est il yci.—Schar. Vous entendez malement, &c. A.D. 1340.

§ *Replegiari* [11] vers Alice et J.—Alice dit qele ne les prist pas. J. conust la prise, come baillif A. et un R., en lour several, damage fesaunt.—*Pole.* Ceste Alice pur qi vous conissez est mesme la persone qad dedit la prise, issi qe pur lui ne puissez conustre; qar si ele fust prie en eide et venist pas vous serres atteint. (*Quod fuit negatum.*) Et en ceo cas, pur ceo qele est partie, ele ne serra pas prie en eide.—Hill. Il nest pas resoun qe plee dun ouste les autres de ses avantages; qar en *Replegiari* porte vers ij., lun dedit la prise, lautre avowe et conust pur celui qad dedit, uncore lavowere nabatra pas.—Schard. Il ad fait conisance pur un autre qe nest pas partie, par quei sa matere est meillour, et poet aver retourn pur lautre qe nest pas partie; et sil ust conu pur celui qest partie qad dedit prise, il navera pas retourn.—*Pole.* Nous vous dioms qe le lieu ou la prise se fist est nostre several demene; jugement si illoeqes puisse la destresse avower.—*Gayn.* Cest [le several R. et A.; prest, &c.—*Et alii e contra.* Replegiari. [Fitz. *Avowre*, 118.]

(62.) [12] § Dower, ou leir le baroun fust vouche en autre counte en la garde un J., qe vient par somons et dit Dower. [Fitz. *Jugement*, 159.]

[1] The words between brackets are not in 25184.
[2] L., avez avowe.
[3] L., qe avoit.
[4] se is not in L.
[5] prise is not in L.
[6] L., qe cest, instead of qele est.
[7] L., prise.
[8] The words between brackets are not in L.
[9] nous is not in 25184.
[10] de is not in L.
[11] This report of the case is from T. alone.
[12] From T. alone.

A.D. 1340. he came by summons, and said that there was another who held in wardship part of the tenements in another county, &c., not named in this voucher; judgment of the voucher.—The tenant said it was not so; ready, &c.—*Thorpe,* for the demandant, prayed seisin of the land.—SCHARDELOWE. If it be found that there is not another guardian, she shall recover against the heir.—*Thorpe.* If he had said that he had nothing in wardship, or that he could not deny the action and had nothing by descent, she would recover at once.—*Mallum.* In that case the judgment would be conditional, but not in this case.—And afterwards they were at issue as to whether there was another guardian or not. And the woman had *Idem dies.*

Formedon. (63.) § Formedon, by reason of a partition made between parceners.—*Thorpe.* We tell you that one A., grandfather of the demandant, while the tenements were in the seisin of E. our ancestor, granted and confirmed to him and his heirs to warrant to him his heirs and assigns; and he said that the tenant was the assignee of the heir; judgment whether in opposition to the deed, &c.—*Pole* denied the deed.—And the other side said the contrary.—*Quære.*

Avowry. (64.) § In an avowry *W. Thorpe* avowed the taking as good, &c., on the plaintiff, &c., for the reason that one Walter, the plaintiff's grandfather, held of one John, the defendant's grandfather, one messuage and one carucate of land, by homage, fealty, escuage, and the services of 5*s.* to be paid, &c., of which services this same John was seised through the hand of Walter as through &c. And after the death of John and Walter he who now avows was seised of the fealty of the plaintiff, and for the plaintiff's homage in arrear he avows, &c.—*R. Thorpe.* That which you call one messuage and one carucate of land is one messuage and thirty acres of land, three

qil y avoit un autre qe tient en garde partie des tene- A.D. 1340.
mentz en autre counte, &c., nient nome en ceo voucher; jugement del voucher.—Le tenant dit qe noun; prest, &c.—*Thorpe*, pur la demandante, pria seisine de terre. —SCHARD. Sil soit trove qil neyt pas autre gardeyn ele recovera vers leir.—*Thorpe.* Sil ust dit qil nust rien en garde, ou qil ne pout dedire laccion et qil nad rien par descente, ele recovereit meintenant.—*Mallum.* La serra le jugement condicionel, mes nient en ceo cas. —Et puis sont a issu le quel il y avoit autre gardein ou nient. Et la femme ad *idem dies.*

(63.)[1] § Forme doun, par resoun de purpartie fait entre parceners.—*Thorpe.* Nous vous dioms qun A., ael le demandaunt, en la seisine E. nostre auncestre, graunta et conferma lui et ses heirs a garrantir lui et ses heirs et ses assignes; et dit qil est lassigne leir; jugement si contre le fet.—*Pole* dedit le fet.—*Et alii e contra.*—*Quære.* Forma donationis.

(64.)[2] § En un avowere[3] *W. Thorpe* avowa la prise bon, &c., sour le pleintif, &c., par la resoun qun Walter[4] son aiel tient dun Johan son aiel, &c., un mies[5] et un carue de terre, par homage, fealte, escuage,[6] et par les services de v.*s.* a paier, &c., de quex services mesme cesti Johan fuit seisi par my la mayn Walter[4] com par &c. Et[7] apres la mort Johan et Walter[4] celuy qore avowe fuit[8] seisi de la fealte le pleintif, et pur soun homage arrere il avowe, &c.—*R. Thorpe.* Ceo qe vous apellez un mies[5] et un carue de terre cest une mies[9] et xxx.[10] acres Avowere.

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[1] From T. alone.

[2] From L., and 25184, as far as the point at which the larger type ends, but corrected by the record *Placita de Banco*, Michaelmas, 14 Ed. III., R°. 433 d. It there appears that the action was brought by Thomas, son of Henry Chaumberleyn, against Stephen de Bassyngburne, knight, and Richard Atte Wode.

[3] L., avawre.

[4] L. and 25184, W.

[5] L., myse.

[6] The word escuage does not appear in L. and 25184, but is supplied from the record.

[7] Et is not in L.

[8] fuit is not in 25184.

[9] L., meis.

[10] L., xx.

A.D. 1340. acres of meadow, and two acres of wood, out of which you suppose the 5*s.* to be issuing, and we tell you that this same John, by this deed which is here, gave, granted, and confirmed other four acres of land, and with them the same rent whereof you have spoken, to the aforesaid Walter, our grandfather, and to one Elizabeth his wife, to have and to hold to them and to the heirs of their two bodies begotten, while the said Walter was seised of the same land that you suppose him to have held of John your grandfather, and the terms of the grant in the same deed were that they should render to John and to his heirs one clove by the year for all services, and should have and hold the said tenements, with wardships, reliefs, and escheats; and we demand judgment whether you can maintain this avowry against us for homage in opposition to the deed of your ancestor, whose heir you are.—And the deed purported all the above and more, that is to say, it contained in the *Habendum* clause as above, and further "in fee and inheritance for ever."—And observe the form of the conclusion, for he did not conclude "judg-"ment whether you can avow for services other than "those comprised in the deed"—but as above.—*W. Thorpe.* The commencement of your answer is in abatement of my avowry (for, whereas I have supposed one messuage and one carucate of land to be one entire tenancy held of my grandfather and of me, you have made this land and other land one entire tenancy) and your conclusion is in bar; wherefore hold to one.—SCHARDELOWE. He did not plead in abatement of your avowry, nor did he deny that he held of you, but he

de terre, iij. acres de pree, et ij. acrez de boys, dount A.D. 1340.
vous supposez les[1] v.s. estre issauntz, et vous dioms qe mesme celuy Johan, par ceo fait qe icy est, dona, granta, et conferma altres iiij. acrez de terre, et mesme la rente ovesqe, dount vous avez parle, a lavantdit Walter,[2] nostre aiel, et a un Elizabeth[3] sa femme, a aver et tener a eux et a les heirez de lour deux corps engendrez, dementres qe le dit Walter[2] fuit seisi de mesme la terre quel vous supposez qil tient de Johan[4] vostre aiel, et granta par mesme le fait de rendre a luy et a[5] sez heires un clou de gilofre par an pur touz services et[6] a aver et tener les ditez tenementz ove[7] wardes[8] reliefs[9] et escheetez;[10] et demandoms jugement si pur homage poiez sour nous ceste avowere encontre le fait vostre auncestre, qe heire vous estes, mayntener.—Et le fait voleit tot *ut supra* et plus,[11] cest assaver[12] en cele clause *Habendum*, &c., *ut supra*, et outre *in feodo et hereditate in perpetuum.—Et*[13] *vide modum conclusionis*, qar il ne concluda mye—jugement si pur autres services qe sunt compris en le fait poiez avower,—mes *ut supra.—W. Thorpe.* Le commencement de vostre respons est en abatement de mavowere, qar la ou jay[14] suppose un mies[15] et une carue de terre une entere tenance [tenu de mon aiel et de moi, auxi vous avez fait cele terre et altre terre une entere tenance],[16] et vostre conclusion est en barre; par quei tenez vous a lun.—SCHARD. Il ne pleda mye en abatement de vostre avowere, ne il ne dedit pas qil

[1] les is not in L.
[2] L. and 25184, W.
[3] L., Eleabeth.
[4] L., J.
[5] a is not in L.
[6] et is not in L.
[7] L., oveu.
[8] 25184, garr.
[9] L., relefis.
[10] The words in the corresponding part of the record are *cum wardis, releviis, et escaetis.*
[11] L., pus.
[12] 25184, saver, instead of cest assaver.
[13] Et is not in L.
[14] L., jeo lay, instead of la ou jay.
[15] L., myse.
[16] The words between brackets are not in 25184.

A.D. 1340. said that he held by a less service than you supposed, and in order to maintain that contention he produces the deed of your ancestor; wherefore you must answer to him.—*W. Thorpe.* Show then in what capacity he makes use of this deed—whether as heir in tail to the two (and that would be in abatement of my avowry)—or as heir simple to Walter (and that would be another way of pleading)—for to the different manners of pleading I can have different answers.—*R. Thorpe.* I wish to aid myself by the whole of the deed, whatsoever estate the law may give me, and, since you do not deny the deed, we demand judgment as above, and pray our damages. —*W. Thorpe.* Always saving our avowry, we also demand judgment, since the deed does not discharge the messuage and the carucate of land whereof the place in which the taking was effected is parcel, and you do not deny the tenancy as above, or that the homage is in arrear, and we pray the Return, &c.[1]

Avowry. § Avowry, because the plaintiff held of the defendant by homage and the services of 5*s.*—*Thorpe.* Your ancestor gave that land to our ancestor, and afterwards granted and confirmed that land and other land to our ancestor and his wife, and released all the right which he had in the 5*s.*, to hold by one clove for all services; and the deed contained the words "*in feodo et heredi-*" "*tate in perpetuum*"; judgment whether for the homage in opposition to the deed, &c.—*Thorpe.* That plea goes to the

[1] According to the record the replication on behalf of the defendant was (shortly) that there were not in the deed any express words by which the tenements were discharged of homage and escuage. But as the grant was "cum wardis, "releviis, et escaetis, in quibus "verbis homagium et omnia alia "servitia sunt intellecta," and as the rent was extinguished, the plaintiff prayed judgment whether the defendant could avow for homage in arrear. Upon inspection of the deed produced the Court held that the defendant had distrained contrary to his ancestor's deed. Judgment was therefore given for the plaintiff, with damages assessed by the Justices at 20*s.*

ne tient de vous, mes il dit qe par mayndre service, A.D. 1340.
et de ceo mayntener[1] moustre il[2] le[3] fait de vostre auncestre ; par quei il coveynt qe vous respoignez a luy.—*W. Thorpe.* Moustrez donqes coment il use ceo fait—ou com heire en la taille a les ij. (et ceo serreit en abatement de mavowere)—ou com heire simple a Walter[4] (et cest autre voie)—qar a lun manere[5] et a[6] lautre jeo puisse[7] aver divers respons.—*R. Thorpe.* Sour[8] tot le fait jeo moy[9] voille eydre,[10] quel estat qe ley[11] moy dorra,[12] et, del houre qe vous ne deditez my le fait, nous demandoms jugement *ut supra,* et prioms noz damages.—*W. Thorpe.* Touz jours salvant nostre avowere, et nous demandoms jugement, del houre qe le fait ne descharge mye le mies[13] et le carue de terre dount le lieu ou la prise se fist en est[14] parcel, et vous ne deditez mye le tenance *ut supra,* et lomage arere, et prioms retourn, &c.

§ Avowerie,[15] pur ceo qil tient de lui par[16] homage et par v. *s.*[17]—*Thorpe.* Vostre auncestre dona a nostre auncestre cele terre, et puis granta et conferma[18] a nostre auncestre[19] et sa femme cele terre et autre terre, et relessa tout le dreit qil avoit en les v. *s.*, a tenir par une clowe de Gelofre pur touz services ; et le fet voleit *in feodo*[20] *et hereditate in perpetuum ;* jugement si pur homage contre le fet, &c.—*Thorpe.* Ceo plee va al abatement del avowerie, qar par lavowerie est suppose Avowri.

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[1] mayntener is not in L.
[2] il is not in 25184.
[3] le is not in L.
[4] L., and 25184, W.
[5] manere is not in L.
[6] a is not in L.
[7] L., pus.
[8] L., Sire.
[9] 25184, ne.
[10] 25184, iad.
[11] L., luy.
[12] 25184, durra.
[13] L., myse.
[14] 25184, eust este, instead of en est.
[15] This report of the case is from T., and Harl. 741.
[16] Harl., de.
[17] Harl., M.
[18] The words et conferma are not in Harl.
[19] Harl., ly, instead of nostre auncestre.
[20] T., en feaute, instead of *in feodo.*

A.D. 1340. abatement of the avowry; for by the avowry the land comprised in the avowry is supposed to be one tenancy; and you suppose that and other land to be one tenancy. — *Kelshulle.* We are pleading in discharge.—*Thorpe.* The deed only extends to change the rent of money into one of a clove, so that the homage remains.—*Pole.* The deed purports that he granted with "wardships and escheats," &c., and purports that he released to hold by the clove for all services, so that more cannot be demanded.—*Thorpe.* The grant was made to the husband and the wife, which cannot give an estate to the wife; besides, the deed extends only to the 5*s.*—STONORE. These are two points; hold you to one.—*Thorpe* held himself in judgment on the point that the deed extended only to the 5*s.*—And so to judgment.

Dower. (65.) § Dower, where aninfant was vouched who was in the wardship of the King and the Queen and others; and he prayed that the parol might demur.— *Rokell.* The King has nothing, and the Queen is just like any other person.—*Thorpe.* The question whether the King has anything or not shall not be tried without him.—Wherefore the demandant was told that he should sue to the King, and have a summons against the others.

Mesne. (66.) § Upon a writ of Mesne *Blaik* pleaded :—Not distrained through our default.—*Rokell.* Ready that we were. And we pray judgment of liability to acquit us of services, for that is now held by you as admitted.—*Blaik.* You shall not have judgment now upon that, for you may yet be non-suited, or the issue may be found against you, in which case your writ will abate. Besides, if you now had judgment as to liability to

la terre[1] compris deinz lavowerie estre une tenance ;[2] [et vous supposez cele et autre estre une tenance].[3]—*Kels.* Nous pledoms en descharge.—*Thorpe.* Le fet[4] ne sestent forsqe de chaunger[5] la rente deners[6] en une clowe de Gilofre, issi qe lomage demoert.—*Pole.* Le fet voet qil graunta "*cum*[7] *wardis et eschaetis,*" &c., et voet qil relessa a tenir par la clowe de gylofre pur touz services, issi qe pluis[8] ne poet estre demande. —*Thorpe.* Le grant fust fait al baroun et la femme, qe[9] ne poet doner estat a la femme ; ovesqe ceo, le[10] fet ne sestent forsqe a la v. souz.—[Stonore. Ses sont deux pointz ; tenez vous a lun.—*Thorpe* se tient en jugement qe le fet nestent forsqe a la v. souz.][11]—*Et sic ad judicium.*[12] A.D. 1340.

(65.)[13] § Dower, ou lenfant fust vouche en la garde le Roi la Reigne et dautres, et pria qe la parole demorast. — *Rokel.* Le Roi nad rien, et la Reigne est come autre persone.—*Thorpe.* Le quel le Roi eit ou noun ceo ne serra pas trie saunz lui mesme.—Par quei dit est al demandant qil suye vers le Roi, et la somons vers les autres. Dower.

(66.)[14] § En un bref de Meen, *Blaik.*[15] Neynt destreint par nostre defaute.—*Rokel.* Prest qe cy. Et nous prioms jugement de laquitance, qar cella[16] est ore tenu de vous com agrante.—*Blaik.* Vous naverez mye jugement ore sour ceo, qar vous poiez unqore estre nounsuy, ou[17] la myse put estre trove encountre vous, en quel cas vostre bref abatera. Ovesqe ceo, si vous ussez ore jugement de laquitance, et autre foith Meen.

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[1] The words suppose la terre are not in Harl.

[2] Harl., tenant.

[3] The words between brackets are not in Harl.

[4] Harl., et, instead of *Thorpe.* Le fet.

[5] T., chalange de.

[6] Harl., de user.

[7] T., come ; Harl., com.

[8] Harl., puis.

[9] qe is not in Harl.

[10] Harl., cel, instead of ceo le.

[11] The words between brackets are not in Harl.

[12] There is also a third report of this case (distinct from the above) in Harl. 741, in which the names of the parties are stated, but they are best shown by the record.

[13] From T. alone.

[14] From L., and 25184, as far as the point at which the larger type ends.

[15] *Blaik* is not in L.

[16] L., cel.

[17] L., la ou.

A.D. 1340. acquit, and hereafter the issue passed in your favour, you would then have another judgment to recover damages, and so there would be two judgments upon one writ, which would be inconvenient.—*Pole.* It is not so, for if, upon a writ of *Warrantia chartæ* brought against you, you say that he who brings the writ is not and has not been impleaded, the issue shall be taken and tried at once, although the warranty is admitted, in respect of which he shall leave his judgment; so also upon a *Quare impedit*, if you say that you have not disturbed; and so also upon a writ of Dower *unde nihil habet*, if you cannot deny her ground of action, but in order to escape damages say that the husband did not die seised; so also it seems in this case.—And the issue was received and was entered upon the roll.—Therefore it was considered that in future the defendant should acquit the plaintiff.—And it was said that, if the plaintiff will, he shall, upon this judgment, have a writ to distrain the defendant to acquit him.—Therefore *quære*, &c.

Mesne. § Mesne, where the defendant said that the plaintiff was not distrained by his default; ready, &c.—And the other side said the contrary.—*Pole.* We pray judgment of the liability to acquit acknowledged, and the inquest for our damages.—*Thorpe.* That cannot be; for if it be found that you were not distrained through our default, the writ will abate.—*Mallum.* What you say is wrong; the writ will not abate any more than in a *Quare impedit*, where if the defendant allege that he has not disturbed, the plaintiff will have a writ to the Bishop and the inquest for the damages; and so here; and it is the common course.—Wherefore it was adjudged that the plaintiff should recover the acquittal, and have a *Venire facias* for damages upon their issue.

Cessavit. (67.) § The Prior of Saint Austin of Canterbury brought a writ of *Cessavit* against a man and his wife in respect of tenements which they held of him as in right of the

le myse passat pur vous, donqes averez vous un autre jugement a recoverir damages, issint deux jugements sour un bref, quel chose est inconveniente. —*Pole.* Non est pas,[1] qar en un bref de garrantie de chartre porte devers vous si vous ditez qe celuy qe porte le bref nest mye enplede[2] ne ne[3] fuit, lissue serra prise et trie mayntenant, mesqe[4] la garrantie est conu, de quei il avera son jugement; auxi en un *Quare impedit* si vous diez qe vous navez mie[5] destourbe; et auxi en un bref de dowere *unde nihil habet,* si vous ne poiez dedire saccion, mes pur estourtre des damages vous ditez qe le baroun ne morust pas[6] seisi; auxi semble[7] il yci.—Et lissue fut resceu et fut entre en roule.—*Ideo consideratum est*[8] *quod in posterum ipsum acquietet.*—Et dit fuit, si lautre voille, il avera bref hors de cel jugement a destreindre lautre de[9] luy aquiter.—*Ideo quære,* &c. A.D. 1340.

§ Mene,[10] ou le defendant dit qe nient destreint par sa defaute; prest, &c.—*Et alii e contra.*—*Pole.* Nous prioms jugement del acquitance conu, et lenquest pur noz damages.—*Thorpe.* Ceo ne poet estre; qar si trove soit qe nient destreint par nostre defaute le bref sabatera.—*Mallum.* Vous dites mal; nient pluis qen un *Quare impedit,* si le defendant allege qil ne lad pas destourbe, le pleintif avera bref al Evesqe et enquest pur damages; et auxi icy; et cest comune cours.—Par quei agarde fust qe le pleintif recoverast lacquitance, et *Venire facias* pur damages sur lour myse. De Medio. [Fitz. *Jugement,* 158.]

(67.)[11] § Le Priour de Seynt Austyn de Caunterbire porta un bref de *Cessavit* vers un homme et sa feme des tenementz qeux ils tyndrent de luy com de dreit Cessavit.

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[1] pas is not in L.
[2] 25184, enpledabe.
[3] The second ne is not in L.
[4] 25184, mes mayntenant, instead of mayntenant mesqe.
[5] mie is not in L.
[6] pas is not in L.
[7] L., sembe.
[8] est is not in L.
[9] L., et de.
[10] This report of the case is from T. alone.
[11] From L., and 25184, as far as the point at which the larger type ends.

A.D. 1340. wife; and the writ purported that they had ceased, &c.; and the husband appeared by attorney and the wife appeared by guardian.—*Gayneford* came to the bar, and, for the demandant, rehearsed all this, and said that the wife was of full age, and prayed that she might be viewed. (He had hesitated to count against them according to the manner in which they appeared in Court for fear of abatement of his writ.)—*Rokell.* We are here in Court ready, and you do not say anything against us; judgment how we ought to depart.—*Gayneford* counted against them.—*Rokell* prayed that the parol might demur until the full age of the wife for cause shown.—*Gayneford.* This writ is given in place of an avowry, and we have supposed the cesser to be by yourselves; judgment whether you can have your age allowed.—And afterwards *Gayneford* said *gratis* that the wife was of full age, and prayed that she might be viewed by the Court.—And the other side said the contrary.—And the guardian was directed to produce the wife in Court on another day, &c.

Cessavit. § *Cessavit* against a man who answered by attorney; and his wife appeared by guardian.—*Gayneford.* The wife is of full age, and we pray that her husband may be directed to cause her to come.—*Mallum.* In such a case the guardian shall be directed to cause his principal to come, but not so the husband, for *Venire facias* shall issue.—*Rokell.* The wife's ancestor died seised, &c., after whose death she is in possession as daughter and heir, and she prays her age.—*Gayneford.* On your own cesser you shall not have your age allowed, and in a Replevin you would be party notwithstanding your non-age.—But he did not dare to abide judgment, because the Court thought that she should have her age allowed. Therefore he said that she was of full age. And her guardian was directed to cause her come.

Voucher. (68.) § Voucher of two persons as heirs. The Sheriff returned that one had nothing, and that the other had

la feme; et le bref voleit qils avoient cesse, &c.; et A.D. 1340.
le baron fuit par atourne et la feme fut[1] par gardeyn.—*Gayn.* vint a la barre et, pur le demandant, rehercea tot ceo, et dit qe la feme fuit de pleyn age, et pria qe ele fuit veu. (Il avoit doute de counter devers eux par le manere com ils furent en Court pur abatement de son bref.) — *Rokel.* Nous sumes yci en Court prest, et vous ne ditez rien devers nous; jugement coment nous devoms departir. — *Gayn.* conta devers eux. — *Rokel* pria qe la paroule demorast tant qal age la feme par cause. — *Gayn.* Cesti bref est done en lieu davowere, et nous avoms suppose le cesser[2] par vous mesmes; jugement si vous devez vostre age aver.—Et pus de gree dit *Gayn.* qele fuit de pleyn age et pria qele fuit veu de Court.—*Et alii e contra.*—Et dit fuit al gardeyn daver[3] yci la feme a un autre jour, &c.

§ *Cessavit*[4] vers un homme qe respondi par attourne; et sa femme fust par gardein.—*Gayn.* La femme est de pleine age, et prioms qe dit soit a son baroun qil la face venir.—*Mallum.* Al gardein homme dirra en tiel cas qil face venir son mestre, mes al baroun nient, qar ist[r]a *Venire facias.*—*Rokel.* Launcestre la femme morust seisi, &c., apres qi mort ele est einz come fille et heir, et prie son age.—*Gayn.* De vostre cesser demene naverez pas vostre age; et a un *Replegiari* vous serrez partie *non obstante* vostre noun age. — Mes il nosa pas demorer pur ceo qe Court entendy qele avera son age; par quei il dist qil est de pleine age. Et dit est a son gardein qil la face venir.[5] Cessavit. [Fitz. *Age*, 88.]

(68.)[6] § Voucher de deux come des[7] heires. Le Vicounte retourna qe lun navoit rien, et lautre fust Voucher.

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[1] fut is not in L.

[2] L., lencesser, instead of le cesser.

[3] daver is not in L.

[4] This report of the case is from T. alone.

[5] There is a third report of this case in Harl. 741, in which the Prior of St. Austin's is described as Abbot, and in which the names of the defendants are given as Henry Gisors, and Joan his wife. In this it is represented that the Court required the husband to produce the wife to be viewed.

[6] From T., and Harl. 741.

[7] des is not in T.

A.D. 1340. been summoned. *Quære,* if he testifies thus until the *Sequatur suo periculo,* what will be done. And the tenant purposed to have acknowledged that the one had nothing. *Quære* the cause of this.

Escheat. (69.) § Escheat.—*Thorpe.* We tell you that the tenements are in the borough of Bristol, within which all tenements are holden in chief of our Lord the King, who has always had the escheats; and our Lord the King entered this land as his escheat, and gave it to us by his charter; judgment whether you can demand anything. —*Stouford.* He answers nothing; and we demand judgment. And we tell you that the Earl of Gloucester was seised of that borough and gave it to King John since time of memory; judgment whether you can say that it has been always holden of the King.—Afterwards, in Easter term in the 15th year, *Thorpe* said:—We tell you that Bristol is the King's free borough, where the King and his progenitors, from time whereof memory is not, have had the escheats, of whomsoever any lands might be holden; and we tell you that our Lord the King, by reason of the felony of his tenant, seised the escheat and enfeoffed us; judgment whether an action, &c.—*Gayneford.* We tell you that in the town of Bristol there is a fee called Bretley's fee which extends into two streets, &c., and they are parcel of the manor of B. which extends into two counties, of which manor the land demanded is parcel; and we tell you that the town of Bristol was in the seisin of W. Earl of Gloucester in the time of King Richard, before which time it was never in the hands of Kings; and from W. the earldom descended to three daughters, one of whom King John, before he was King, married, so that the town of Bristol was allotted as the purparty of the wife of King John, and thus it came into the hands of Kings; judgment whether he can say that this made it the King's free borough, or thereby oust us from our action. And *Gayneford* said further that the King and his progenitors had not had the escheats.—

somons. *Quære* sil testmoigne issi tanqe le *Sequatur* A.D. 1340.
suo periculo quei serra fait. Et le tenant fust en purpos daver conu qe lun navoit rien. *Quære istam causam.*

(69.)[1] § Eschete.—*Thorpe.* Nous vous dioms qe les tenementz sont en le Burghe de B., deinz quele touz les tenementz sont tenuz en chief de nostre seignur le Roi, qe tout temps ad ew eschete; et nostre seignur le Roi entra ceste terre come sa eschete, et la dona a nous par sa chartre; jugement si vous poez rien demander.—*Stouf.* Il respond rien; et nous jugement. Et vous dioms qe le Count de Gloucestre fust seisi de cel Burghe et le dona au Roi J. puis temps de memorie; jugement si vous poez dire qe tout temps il est tenuz du Roi.—*Postea termino Paschæ anno xv., Thorpe.* Nous dioms qe Bristut est fraunc Burgage le Roi, ou le Roi et ses progenitours, de temps dont memorie nest, ount ew les eschetes de qicunqes queles terres soient tenuz; et vous dioms qe nostre seignur le Roi par la felonie son tenant seisist leschete et nous feffa; jugement si accion.—*Gayn.* Nous vous dioms qen la ville de Brestut est une fee qest apele le fee de Bretley qe sestent en ij. rues, &c., et sount parcele du manoir de B. qe sestent en ij. countees, [de] quel manoir la terre demande est parcele; et vous dioms qe la ville de Bristut fust en la seisine W. Count de Gloucestre en temps le Roi Richard, devant quel temps ceo ne fust unqes en meyns des Rois; et de W. descendi la counte a iij. filles, dount le Roi Johan esposa une avant qil estoit Roi, issi qe la ville de Brustut fust alote a la purpartie la femme le Roi Johan, et issi devient en meyns des Rois; jugement sil poet dire qe ceo fist fraunc Burghe le Roi, ou par taunt nous ouster de nostre accion. Et dit outre qe le Roi et ses progenitours nount pas ew Eschete.

[1] From T. alone, as far as the point at which the larger type ends.

A.D. 1340. *Thorpe.* Your replication is double; one part of it lies in fact, as to whether the King and his progenitors have had the escheats or not, &c., and the other in record, &c., as to whether this be the King's free borough or not; wherefore hold you to one.—HILLARY. You oblige him by your answer to plead both.—*Thorpe.* The answer is accepted as good; and, although they may have accepted a double answer, it does not thereby follow that he should have a double replication.—HILLARY. We will not permit you to go on with two answers, even though they might be willing to accept them; and therefore make your answer with certainty; and you have a day by *Prece partium*, in which case all that was pleaded before loses its force, and the tenant is at liberty to plead anew. — *Thorpe.* I do not think so; but our plea is entered on the roll, and it is accepted and cannot be removed.—And afterwards *Gayneford* said that the King had not had the escheats in that town from all time; ready, &c.; and they have not denied that the tenements are holden of us; judgment; and we pray seisin.—And in this plea HILLARY said that of common right everywhere the King shall have the year and waste, and that, if he give when he is so seised, the lord can only have a writ of Escheat against the tenant. *Quære.—Blaik.* The King has had the escheats from all time; ready, &c. —And the other side said the contrary.

Escheat. § John de Berkelay brought a writ of Escheat against John de Weston, and demanded a messuage in the suburb of Bristol. —*Thorpe.* Whereas you demand this escheat on the ground of the felony committed by John Traverner, you cannot demand anything, for Bristol and the suburb are the King's free borough, where the King, as in right of his crown, ought to have escheat of all the tenants in the city, of whomsoever the tenements may be held, and of these escheats the King and his progenitors have been seised since time of memory; and we tell you that our Lord the King entered by reason of the felony committed by John Traverner and enfeoffed us; judgment whether you can have an action.—*Pole.* We pray that it be recorded that he does not deny that the tenements are held of us. And we tell you that King John purchased the seignory of Bristol from the Earl of Gloucester,

les eschetes.—*Thorpe.* Vostre replicacion est double ; A.D. 1340.
lun chiet en fait, qe le Roi et ses progenitours ount ew eschete ou noun, &c., un autre en record, &c., si ceo soit fraunc Burghe le Roi ou noun ; par quei tenez vous a lun.—HILL. Vous le mettes par vostre respouns dire et lun et lautre.—*Thorpe.* Respouns est accepte pur bon ; et, tout eient il accepte respouns double, de ceo nensuyst il pas qil avereit replicacion double.—HILL. Nous ne suffroms pas qe vous descendez sur ij., tout le voleint eux accepter ; et pur ceo pernez vostre respouns en certein ; et vous avez jour par *prece partium*, en quel cas tout qe fust plede devant perde sa force, et le tenant a large de repleder de novel.—*Thorpe.* Ceo ne croy jeo pas ; mes nostre[1] plee est entre en roulle, quel est accepte et ne poet estre ouste.—Et puis *Gayn.* dit qe le Roi navoit pas ew les eschetes en cele ville de tout temps ; prest, &c. ; et il nount pas dedit les tenementz estre tenuz de nous ; jugement ; et prioms seisine.—Et en ceo plee HILL. dit qe de comune dreit par tout le Roi avera lan et le wast, et sil le doune qaunt il est issi seisi, le seignur ne poet aver forsqe bref deschete vers le tenant. *Quære.—Blaik.* Le Roi ad ewe les eschetes de tout temps ; prest, &c.—*Et alii e contra.*

§ Johan[2] de Berkelay porta bref de Eschet vers Johan de Eschet.
Westone et demanda un mies en le suburbe de Bristut.—*Thorpe.* La ou vous demandez cest eschet par la felonie Johan Traverner, vous ne poez rien demander, qar Bristut et la suburbe sount fraunk Burghe le Roi, ou le Roi, com de dreit de sa coron, deit aver eschet des touz les tenantz en cite, de qi qe les tenementz soint tenuz, et de cels eschetez le Roi et ces progenitours ount este seisiz du temps de memorie ; et vous dioms qe nostre seignour le Roi par la felonie Johan Traverner entra et nous enfeffa ; jugement si accion poez aver. —*Pole.* Nous prioms recorde qil ne dedit pas les tenementz estre tenuz de nous. Et vous dioms qe le Roi Johan purchacea la seignurie de Bristut du Counte de Gloucestre,

[1] T., vostre.

[2] This report of the case is from Harl. 741 alone.

A.D. 1340. and that before that time the messuage demanded was held of our ancestors, by the services whereof we have counted, as regardant to our manor of T.; and that tenancy and seignory continued until the felony was committed; judgment; and we pray seisin of the land.

Dower. (70.) § Dower, where two guardians were vouched, and process was sued as far as the *Sequatur suo periculo*, to which writ the Sheriff testified the summons on one, and that as to the other he did not serve the writ. And the tenant was essoined, and the essoin was adjudged and adjourned. *Quære* the further process.

Outlawry pronounced. (71.) § Outlawry was pronounced against J. de B., at the suit of one G., upon a writ of Account. And he was taken, and he came into the Chancery and made his suggestion that he was a different person from the person against whom, &c., and he had a writ to the Justices that they should do right. And now he comes into Court and says that he is not the same person. And G. was there ready, and acknowledged it.—STONORE. G.'s suit is at an end, wherefore we cannot take notice of his acknowledgment, but we will take an inquest for the advantage of the King to try whether you be the same person.—And he did so.—And J. de B. was let out on mainprise until the Quinzaine of Hillary.

Entry *de quibus*. (72.) § A writ *de quibus* was brought against a tenant, who made default after default.—One came thereupon, who said that the tenant held for term of life by lease from him, and prayed to be admitted to defend, and was admitted, notwithstanding the fact that his prayer was contrary to the writ, for it was said that such an estate might very well exist at a different time.—And he

devant quel temps le mees demande fu tenuz de nos aunces- A.D. 1340.
tres, par les services com nous avoms counte, com regardant a nostre manere de T.; et cel tenance et seignourie continuerent tanqe a la felonie fet; jugement, et prioms seisine de terre.

(70.)[1] § Dower, ou deux gardeinz furent vouches, et proces suy[2] tant qa le *Sequatur suo periculo*, a quel bref le Vicounte tesmoigna[3] la somons sur lun, et qaunt a lautre il ne servy pas le bref. Et le tenant est essone, et lessone ajuge et ajourne. *Quære* proces *ulterius*. Dower. [Fitz. *Essone*, 13.]

(71.)[1] § Utlagerie pronuncie en J. de B., a la suyte un G.,[4] en bref dacompt. Et il fust pris, et vient en Chauncellerie [et fist sa suggestion qil est autre persone qe celui vers qi &c.],[5] et avoit bref as Justices qit feissent[6] dreit. Et il vient ore en Court et dit qil nest pas mesme la persone. Et G.[4] fust la prest et le conisast.—STONORE. La suyte G.[7] est termine, par quei nous ne poms aver regard a sa conisance, mes nous prendroms un enquest en avantage le Roi a trier si vous soietz mesme la persone. —*Et*[8] *sic fecit.*—Et il est lesse par meynprise *usque ad xv. Hillarii.*[9] Utlagerie pronuncie. [Fitz. *Idemptitate Nominis*, 6.]

(72.)[10] § Bref *de quibus* fut porte vers un tenant qe fist defaute apres defaute.[11]—Sourvynt un et dit qil tient a terme de vie se son lees et pria, &c., et fut[12] resceu, *non obstante* qe sa prier fuit a contrare du bref, qar dit fuit qe ceo[13] purra bien estre a divers temps.—Et il voucha a garrant un J. qe vynt et Entre de quibus.

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[1] From T., and Harl. 741.
[2] suy is not in T.
[3] Harl., testmoigna.
[4] T., T.
[5] The words between brackets are not in Harl.
[6] Harl., feseint.
[7] G. is not in T.
[8] Et is not in T.
[9] There is a very similar case in Easter Term, 15 Edw. III. (No. 9.)
[10] From L., and 25184, as far as the point at which the larger type ends.
[11] 25184, &c., instead of apres defaute.
[12] L., destre, instead of &c., et fut.
[13] L., jeo.

A.D. 1340. vouched to warranty one J. who came and entered into warranty, and produced in bar of the action the demandant's release in which witnesses were named, and which deed was denied. And now it was found "Not his deed." And one of the witnesses was joined to the inquest. Thereupon it was adjudged that the demandant should recover against the tenant, and that the tenant should recover over to the value against the vouchee, to hold in right of him who was admitted, &c., and that the vouchee should be taken, &c. And they would not cancel the deed except in presence of the party. And yet in this case he shall never have Attaint, &c.—And note:—the tenant shall have execution immediately.—And *Quære*, if the vouchee had been bound by a deed of grant of the reversion, what judgment would there have been.

Prayer to be admitted.

§ Prayer to be admitted on the default of the tenant of him who prayed. And he was admitted, and he vouched, and the warrantor lost. Therefore the demandant recovered against the tenant, and the tenant recovered over to the value, that is to say, to hold in right of him who was admitted and who was warranted.

Præcipe quod reddat; exception taken to the writ.

(73.) § Exception was taken to the writ because it was purchased pending another.—*Thorpe.* We first brought a writ against A. and H., which writ abated by the death of H., so that this writ was purchased against A. after the death of H.—*Pole.* You took continuance on the first writ after this writ was purchased; and that is of record.—So this writ was abated now by judgment of the COURT.

Forfeiture of marriage.

(74.) § Forfeiture of marriage. And the plaintiff counted that the defendant held of him, and he tendered a marriage to the defendant, and that, while under age,

entra[1] en la garrantie, et myst avant en barre daccion le reles le demandant en quel testimoins furent nomes, quel fait fuit dedit. Et ore trove fuit Nynt son fait. Et un des testimoins fuit joynte a lenqueste. Par quei agarde fuit qe demandant recoverast vers le tenant, et le tenant outre a la value vers le vouche, a tener en le dreit celuy qe fuit resceu, &c., et qe le vouche soit pris, &c. Et ils ne voleynt dampner le fait sinoun en presence de partie. Et[2] unqore en ceo cas il navera[3] jammes latteynte, &c.—*Et nota* :—le tenant avera execucion mayntenant.—*Et quære,* si le vouche ust este lie par fait de grant de reversion, quel jugement[4] ust este, &c. A.D. 1340.

§ Prier[5] destre resceu par defalte son tenant. Et fust resceu, et voucha, et le garraunt perdy; par quei le demandant recoveri vers le tenant, et il a la value, saver[6] a tenir en le dreit celui qe fust resceu et fust garranti. Prier destre resceu. [Fitz. *Jugement,* 160; *Recovere en value,* 24.]

(73.)[7] § Bref chalenge pur ceo qil est purchace pendant un autre.—*Thorpe.* Primes nous portames bref vers A. et H., quel bref[8] abatist par la mort H., issi qe ceo bref est purchace vers A. apres la mort H.— *Pole.* Vous preistes continuance sur[9] le primer bref pus ce qe ceo bref[10] fust purchace; et cest de record. —Issi[11] cest bref fust abatu par agard de COURT a ore. Præcipe quod reddat; Bref calange.

(74.)[12] § Forfeiture de mariage. Et conta qil tenoit de lui, et il lui tendi mariage, et deinz age il le re- Forfeture de mariage.

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[1] L., tenant, instead of et entra.

[2] Et is not in L.

[3] L., avera.

[4] L., lomage.

[5] This report of the case is from T., and Harl. 741.

[6] saver is not in T.

[7] From T., and Harl. 741.

[8] bref is not in T.

[9] T., de.

[10] Harl., et, instead of pus ce qe ceo bref.

[11] T., issi qe.

[12] From T. alone, but corrected by the record *Placita de Banco,* Mich., 14 Ed. III., R°. 497. It there appears that the action was brought by William de Fillegh against William son and heir of David de Servyngton. The case No. 46 in Hil., 15 Ed. III., appears to be another report or abridgment of this.

A.D. 1340. the defendant refused it, and married elsewhere.—*Thorpe.* He has not counted that the defendant married while under age, nor where he married.—*Pole.* We shall have the forfeiture if he married when of full age.—And this is the opinion of HERLE.—*Thorpe.* We tell you that our ancestor held of the King[1] 10*s.* of rent by one knight's fee, as mesne, &c., and of an elder feoffment, &c., to whom we have made satisfaction for our marriage, and that while we were still unmarried; judgment whether an action, &c.—*Pole.* You cannot say that; for a fine was levied between your ancestor and one J., whereby your ancestor acknowledged certain rent, whereof this rent of which you speak is parcel, to be the right of J., and J. rendered back to your ancestor and A. his wife and the heirs of the husband, which A. is still alive and tenant of the rent; judgment whether it lies in your mouth to plead such priority.—And afterwards the averment was received upon the priority.

Ex parte Office of Court.

(75.) § *Ex parte* was sued in the Exchequer, to recite an account, and to cause the body to be there. And there the plaintiff in the writ was charged with a certain receipt, and he produced an acquittance, which was denied; and thereupon they were at issue. And at another day he produced another general acquittance, made since the last continuance; and thereupon they were again at issue, because the defendant in the writ denied the deed. And it was found that it was not the defendant's deed; wherefore it was adjudged that the plaintiff in the writ should be charged with that with which he was charged by the first account, and that he should remain in custody until he had made satisfaction. And it was said that the last deed ought not to have been tried unless by consent.

[1] But *see* p. 193, note 1.

fusa, et se maria aillours. — *Thorpe.* Il nad pas counte qil maria deinz age, ne ou il se maria.—*Pole.* Nous averoms forfaiture sil se maria de pleyne age.—*Et hœc est opinio* HERLE. — *Thorpe.* Nous vous dioms qe nostre auncestre tient du Roi x.*s.* de rente par un fee de chivaler, com mene, &c., et eigne feffement, &c., a qi nous avoms fait gree de nostre mariage, et si sumes uncore demarie ; jugement si accion, &c.—*Pole.* Ceo ne poez dire ; qar fyne se leva entre vostre auncestre et un J., ou vostre auncestre conust certein rente, dount cele rente de quel vous parlez est parcele, estre le dreit J., et J. rendist arere a vostre auncestre et A. sa femme et les heirs le baroun, la quele est en vie et tenant de la rente ; jugement si a pleder tiel priorite en vostre bouche y gise.—Et puis fust laverement resceu sur la priorite.[1] A.D. 1340.

(75.)[2] § *Ex parte* suy en Leschequer, de reciter un acompt et de faire venir le corps illoeqes, ou il fust charge de certein resceit, et il myst avant une acquitance quele fust dedite ; et sur ceo furent a issu. Et a un autre jour il[3] mist avant une autre acquitance general faite puis[4] la darein continuance ; et sur ceo de rechief il furent a issu, pur ceo qil dedit le fet. Et trove est qe nient son fet ; par quei fust agarde qil fust charge de ceo dount il fust charge par le primer acompt, et qil demorast tanqil ut[5] fait gree. Et fust dit qe le drein fet ne dust pas aver este trie sil nust este par assent. Ex parte : Office de Court. [Fitz. *Accompt*, 74.]

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[1] According to the record "Willelmus filius David dicit, ut prius, quod prædictus David tenuit de prædicto Comite [Hugh de Courtenay, Earl of Devon] et antecessoribus suis, et illis quorum statum, &c., prædictum redditum in Cadebury per antiquius feoffamentum quam prædicta tenementa in Henbury de prædicto Willelmo de Fillegh et antecessoribus suis et illis quorum statum, &c." On this issue was joined.

[2] From T., and Harl. 741.

[3] il is not in T.

[4] T., et puis.

[5] T., fust.

A.D. 1340. Debt. (76.) § Debt for R., executor of the testament of one B., against J. Inges, parson. And he counted how the same J. was bound to B. in 100*l.* for rent issuing from B.'s land, and that B., his testator, released to this same J. the 100*l.* so that this same J. should pay 100 marks, that is to say, 40*s.* every year until the 100 marks should be repaid, except 40*s.* which B. had released to J. for the making of J.'s chancel; and he said that the whole except 25 marks had been incurred before the writ was purchased, and the 25 marks his testator lent to J., &c.; and he produced a deed dated in the 7th year of the King the father of the present King, and the testament which was proved in the 2nd year of our lord the King.—*Rokell* produced the testator's acquittance for 100 marks, which was denied, and as to the 25 marks he offered to wage his law [as to non-receipt].—And the other maintained the receipt.—*Quære* whether the averment lies against an executor.—Afterwards, in Michaelmas in the 15th year, he performed his law.

Scire facias. (77.) § *Scire facias* upon a *Quare impedit* by which the King recovered against John de Colby by reason of the temporalities of the Bishop of Ely being in his hand; and now he sues the writ [of *Scire facias*] against J. and the Bishop of Ely. J. made default.—[*R.*] *Thorpe.*[1] The writ does not suppose the church to be vacant; judgment of the writ.—This exception is not allowed where the King is a party.—[*R.*] *Thorpe.* The writ does not make the Bishop patron, so that there is no reason why he should be named; judgment of the writ.—And to this it was said that it was supposed that the King recovered in right of the Bishop, and so he was patron.—[*R.*] *Thorpe.* The church was not vacant while the temporalities were in the King's hand.—*Stouford.* We tell you that the King was then patron, and J. the occupier of

[1] There is in the MS. a want of distinction between the two Thorpes (R. and W.), one of whom was evidently on one side, the other on the other.

(76.)[1] § Dette pur R., executour du testament un B., vers J. Inges, persone. Et conta qe come mesme celui fust tenuz a B. en c. *li.* pur rente issaunt de sa terre, et qe B., son testatour, relessa a mesme cestui J. les c. *li.* issi qe mesme celui J. paiereit c. marcz, saver chescun aun xl.*s.* tanqe les c. marcz fuissent repaiez, forsqe xl.*s.* qil lui avoit relesse pur la fesaunce de son chancel; et dit qe tout estre xxv. marcz furent encoruz avant le bref purchace, et les xxv. marcz son testatour lui presta, &c.; et mist avant fet de la date de lan vij. le Roi pere le Roi qor est, et testament qe fust prove lan secunde nostre seignur le Roi.—*Rokel* mist avant lacquitance le testatour de c. marcz, qe fust dedit, et de xxv. marcz il tendi sa ley.—Et lautre la resceite.—*Quære* si laverement contre executour gist.—*Postea ecit legem Michaelis xv°.*[2] A.D. 1340. Dette.

(77.)[3] § *Sire facias* hors dun *Quare impedit* par quel le Roi recoveri vers J. [de] Colby par resoun de temporaltes Levesqe Dely en sa mayn; et ore sue le bref vers J. et Levesqe Dely. J. fist defalte.—*Thorpe.* Le bref ne suppose leglise estre voide; jugement du bref. —*Non allocatur* ou le Roi est partie.—*Thorpe.* Le bref ne fait pas Levesqe patron, issi qil nad pas cause pur quei il serra nome; jugement du bref.—Et a ceo fust dit qil est suppose qe le Roi recoveri en le dreit Levesqe, issi est il patron.—*Thorpe.* Leglise ne fust pas voide esteauntz les temporaltes en la mayne le Roi.—*Stouf.* Nous vous dioms qe le Roi adonqes fust patron, Scire facias.

[1] From T. alone.

[2] There is also an abridgment of this case in Harl. 741.

[3] From T. alone, but corrected by the record *Placita de Banco*, Mich., 14 Ed. III., R°. 575 d. It there appears that the *Quare impedit* was brought by the King against John de Colby, in respect of the church of Hadenham (Cambridgeshire).

A.D. 1340. the church, against whom the King recovered, and so the church was then vacant, wherefore no one else had anything therein; judgment for the King.—[*R.*] *Thorpe.* The church did not become vacant by the King's recovery, unless the King had title; now we tell you that the church was not then vacant, so the King is without title.—*Stouford.* Within the year the King would have had execution; therefore after the year he can have it by *Scire facias.*—HILLARY. That does not follow; for in your case the Bishop would excuse himself in a *Quare non admisit,* but he would not do so where he himself is a party; wherefore it is proper that he should now have the recovery.—*Thorpe.* If I recover land without title, I shall have execution without pleading my title.—HILLARY. The case is not similar, for the action higher up is saved; not so here.—*Thorpe.* In a *Scire facias* it is not the action of the party on the first writ that is to be tried; but, if the opposite party cannot say anything *ex post facto* to the contrary, execution will by law be made. Besides, if no one occupied the church but he against whom the King recovered, and no one else made contention, and the King recovered, the recovery is good, for the parson by resignation might make the church vacant, and do so in such a manner that the King might present; the case is stronger when he lost by judgment.—*Kelshulle.* If he was then parson the writ did not lie, so the recovery was null; if another was parson then the church did not become vacant; and this we have offered to aver.—Afterwards, in Trinity term in the 15th year, *Thorpe* said:—This *Scire facias* is sued against the Bishop as against him who is to execute the judgment by which the King recovered; wherefore—as to him who does not show that either the judgment or the execution can be charged on him, since he does not allege plenarty in the person of any one but him who was party to the judgment—it seems that he shall not be admitted to aver that the church was not vacant.—*R. Thorpe.* Our

et J. ocupour del eglise, vers qi le Roi recoveri, et issi fust leglise adonqes voide, pur quei nul autre rien y avoit; jugement pur le Roi.—*Thorpe.* Par recoverir le Roi leglise ne se voida pas, si le Roi nust ew title; ore dioms nous qe leglise adonqes ne fust pas voide, issi le Roi saunz title. — *Stouf.* Deinz lan le Roi eust eu execucion; *ergo* apres lan par *Scire facias.*—HILL. *Non sequitur;* qar en vostre cas Levesqe sescusereit a un *Quare non admisit,* mes si ne freit il pas quant il est mesme partie; par quei il covient qil eit ore le recoverir. — *Thorpe.* Si jeo recovere terre saunz title, jeo averay execucion saunz pleder moun title. — HILL. *Non est simile,* qar laccion est saufve de plus haut; *non sic hic.—Thorpe.* En *Scire facias* accion de partie nest pas a trier sur le primer bref; mes si partie ne sache rien dire *ex post facto* execucion par ley se fra. Ovesqe ceo, si nul ocupa leglise si lui noun vers qi le Roi recoveri, et nul autre mist debat, et le Roi recoveri, le recoverir est bon, qar la persone par resignement purra voider leglise, et issi faire par quei le Roi presentereit; a pluis fort qaunt il perdi par jugement. — *Kels.* Si il fust persone adonqes le bref ne geust pas, issi le recoverir nul; si autre fust persone donqes ne se voida ele pas; et ceo avoms tendu daverer.—*Postea termino Trinitatis anno xv°, Thorpe.* Ceo *Scire facias* est suy vers Levesqe come vers executour del jugement par quel le Roi recovera; par quei, daverer qe leglise ne fust pas voide pur lui qe ne moustre pas qe le jugement ne lexecucion ne poet estre charge de lui, il semble qil ne serra pas resceu, depuis qil nalege pas plenerte dautre persone qe de celui qe fust partie al jugement.—*R. Thorpe.* Nostre averement serreit au Roi a chescun regard; A.D. 1340.

A.D. 1340. averment would be to the King in every respect; for, if the same person who was party was then parson, then there was no vacancy, nor, consequently, did the King's writ lie; and, if another was parson, the averment serves him also.—PARNING. It was never heard that in a *Scire facias* the action on the first Original should be tried; and when the King brought *Quare impedit* he was patron, and there was no other person against whom to sue except him who was party; and although he might have been parson, still by his plea he lost; then it would be strange if you, who have become possessed of the patronage since, should plead that the first judgment was not good.—*R. Thorpe.* No one can prove that by plea a vacancy can be adjudged; for this is neither cession, privation, resignation, nor death of the parson; then although he had been parson, the church was not vacant, nor consequently was the recovery worth anything. And again, they have alleged that he was occupier, so that the church cannot be understood as then full, but vacant, and that we traverse. And it is not here as in the case of land, for the land is always freehold which can be demanded, but not so a presentation unless it be on some vacancy.—KELSHULLE (JUSTICE). You allege that it was not vacant; why then will you not say in whose person it was full?—*R. Thorpe.* Because plenarty is not to be alleged against the King, and also because this Court cannot take cognisance of plenarty: but we offer to aver what can make an issue and be tried.—More afterwards of this plea in Trinity term in the 16th year.—The case was that John de Colby, against whom the King recovered, was at the time of the bringing the *Quare impedit*, according to the judgment given, parson imparsonee of the same church, and by consent pleaded with the King.[1]

[1] The following is an abstract of the case, as it appears upon the record. Simon, Bishop of Ely, prayed and had oyer of the record of the *Quare impedit*, and then said that the church was not vacant at the time at which the temporalities were in the King's hand

qar si mesme celui qe fust partie fust persone adonqes, A.D. 1340.
donqes ny avoit pas voidance, *nec, per consequens*, le bref le Roi ne geust pas; et si autre fust persone laverement lui seert auxi. — PARN. Unqes ne fust oy qen *Scire facias* laccion del primer original serreit trie; et quant le [Roi] porta *Quare impedit* il fust patron, et autre ny avoit vers qi suyr forsqe celui qe fust partie; et coment qe celui fust persone uncore par son plee il perdy; donqes serreit il merveil si vous, qestes avenuz al patronage puis, qe vous pledrez qe le primer jugement ne fust pas bon. — *R. Thorpe.* Nul homme purra prover qe par plee voidance poet estre ajuge; qar ceo est ne cession, privacion, resignement, ne mort de persone; donqes tout ust il este persone leglise ne fust pas voide, *nec, per consequens*, le recoverir de value. Et uncore il ount allege qil fust ocupour, issi qe leglise ne poet estre entendu pleine mes voide donqes, quele chose nous traversoms. Et ceo nest pas icy come en cas de terre, qar la terre est touz jours frank tenement qe poet demander, mes presentement nient sil ne soit sur ascune voidaunce.— KELS. (JUSTICE). Vous alegez qele ne fust pas voide; pur quei ne volez dire donqes de qi ele fust pleine?— *R. Thorpe.* Pur ceo qe plenerte nest pas daleger vers le Roi, et auxi ceste Court ne poet conustre de plenerte; mes ceo qe poet faire issu et estre trie tendoms daverer.—Pluis *postea de isto placito Trinitatis xvj°.—Casus fuit* qe Johan de Colleby, vers qi le Roi recoveri, fust a temps del *quare impedit* porte par le jugement rendu persone enpersone de mesme leglise, et par consence pleda ove le Roi.

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as supposed in the writ of *Scire facias*, and tendered an averment to that effect. It was said on behalf of the King that, as Colby had not in the *Quare impedit* denied the King's right, and recovery was had against him, and the Bishop had not then affirmed any right in his own person, he could not now be admitted to the averment. For the Bishop (these allegations not being admitted) the averment was tendered as before. Judgment was then prayed for the

A.D. 1340. Process in Quare impedit.

(78.) § Mary who was the wife of Giles de Badlesmere brought a *Quare impedit* against William Botevilein, and Margery his wife, and afterwards, at the return of the *Pone per vadium*, W. came, and Margery, made default.—*Stouford* wished to count.—This was not allowed.—He prayed a writ to the Bishop because the husband had not brought his wife, and said that the law applicable in this case was different from that in which the husband made default himself.—Nevertheless the Distress was awarded against both.

Quare impedit.

§ *Quare impedit* against a man and his wife. At the *Pone per vadium* the husband came and the wife made default.—*Stouford.* We pray a writ to the Bishop, for it is the default of the husband that the wife does not come.—And afterwards the Grand Distress issued, for he shall not have a writ to the Bishop before the writ of *Distringas* be served.

Quod permittat.

(79.) § *Quod permittat prosternere.* The plaintiff and the defendant took a *Prece partium.* Afterwards the defendant made default.—*Pole.* We pray the Distress in lieu of the petit *Cape.*—The clerks said he should not have it except after plea pleaded.—*Quære.*

Writ of Right.

(80.) § Robert Ordelf and Joan his wife brought a writ of Right against John son of John Pounde, and counted of the seisin of Richard, grandfather of the wife, making the descent from Richard to Robert, and [from him] to Joan the demandant.—*Thorpe.* You cannot demand anything, for Richard, on whose seisin you demand, had issue William elder than Robert the demandant's father, who was the younger. After the death of Richard, William entered, as son and heir, and

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King, as the Bishop did not deny the allegations, or say anything else to show why the King should not have execution. After several adjournments the averment was admitted. It was then said, on behalf of the King, that the church was vacant when the temporalities were in the King's hand. Issue was joined thereon. The jury found that the church was vacant when the temporalities were in the King's hand. Judgment was given for the King.

(78.)[1] § Marie qe fu la femme Gyles de Badlesmere porta *Quare impedit* vers William Botevilein, et Margerie sa femme, et pus al *Pone per vadium* retourne W. vint, et Margerie fit defaute.—*Stouf.* volet counter.—*Non allocatur.*—Il pria bref al Evesqe pur ceo que le baron navoit pas mene sa femme, et dit qe la ley est autre qe sil ust fet defaute.—*Tamen* la destresse fu agarde vers ambedeux. A.D. 1340. Proces en Quare impedit.

§ *Quare impedit*[2] pur un homme et sa femme. Al *Pone per vadium* le baroun vient, la femme fist defaute.—*Stouf.* Nous prioms bref al Evesqe, qar cest le defaute le baroun qe la femme ne vient pas.—Et puis issit la grande destresse, qar il navera pas bref al Evesqe devant qe le bref soit servy. Quare impedit.

(79.)[3] § *Quod permittat prosternere.* Le pleintif et le defendant pristrent *Prece partium.* Puis le defendant fist defalte.—*Pole.* Nous[4] prioms la destresse en lieu de petit *Cape.*—Les clers disoint qil navera pas si non[5] apres plee plede.—*Quære.* Quod permittat. [Fitz. *Proses*, 25.]

(80.)[6] § Robert Ordelf[7] et Johane sa femme porterent bref de dreit vers Johan le fitz Johan Pounde,[8] et conterent de la seisine Richard,[9] ael la femme, fesaunt la descente de Richard[10] a Robert[11] et Johan qe demande.—*Thorpe.* Vous ne poez rien demander, qar Richard,[12] de qi seisine vous demandez, avoit issue William eisne de Robert[11] pere le demandant pusne. Apres la mort Richard,[12] William entra, com fitz et Bref de Dreit.

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[1] From Harl. 741 alone, as far as the point at which the larger type ends.

[2] This report of the case is from T. alone.

[3] From T., and Harl. 741.

[4] Nous is not in T.

[5] Harl., somons, instead of si non.

[6] From Harl. 741 alone, as far as the point at which the larger type ends, but corrected by the record, *Placita de Banco*, Mich., 14 Ed. III., R°. 507 d.

[7] Harl., Johan de Orof, instead of Robert Ordelf.

[8] Harl., Johan Pounce, instead of Johan le fitz Johan Pounde.

[9] Harl., Thomas. According to the record the person was Richard Pounde, and the descent was traced from him to his son and heir Robert, and from the latter to Joan, his daughter, the demandant.

[10] Harl., T.

[11] Harl., Richard.

[12] Harl., Thomas.

A.D. 1340. died seised, and after his death we are in as son and heir;[1] judgment whether you, who are issue of the younger son, can have an action against us who are issue of the elder.—*Gayneford.* Robert, our father, was the elder, and the son through whom you claim was the younger; ready, &c.[2]

Right. § Right. And the demandant counted of the seisin of his grandfather, making the descent from R. to A. as son, and from A. to J. the present demandant as son. — *Thorpe.* We tell you that R. your grandfather had an elder son W., who entered after the death of R. his father, and continued and died seised; and after his death T. entered as son and heir and died seised, after whose death we entered as son and heir; judgment whether you, who are issue of the younger brother, can demand anything against us who are cousin and heir of the elder son.—*Gayneford.* R. was the elder son; ready, &c.—And the other side said the contrary.

Note. (81.) § Note that a notary was attached, because the Court had a suspicion that he he had just made instruments in a *Quare impedit.*

Entry ad terminum qui præteriit. (82.) § *Ad terminum qui præteriit,* on a lease made by the demandant to one Elias de Choldasshe.—*Thorpe.* We tell you that he leased to Elias de Choldasshe and Joan his wife and the heirs of their two bodies, and bound himself and his heirs to warrant to them and their heirs and assigns[3] (and *Thorpe* showed how the tenant was their heir); judgment whether an action, &c.—*Stouford.* We will aver the lease to Elias which is supposed by our writ. — This was not allowed. —

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[1] i.e., as appears by the record, as son and heir of William's son John.

[2] After issue joined as above, the demandants failed to appear, and judgment was given for the tenant, as appears by the record.

[3] According to the deed as pleaded in the record, Richard Holman, the demandant, gave the tenements to Elias and his wife Joan, "et eorum heredibus de ipsis "exeuntibus vel eorum assignatis "in perpetuum."

heir, et morust seisi, apres qi mort nous sumes einz com fitz et heir; jugement si vous, qi estes issu del pusne, vers nous, qi sumes issu [leisne], poez accion aver.—*Gayn.* Robert,[1] nostre pere, fut eisne, et cely par qi vous clamez fu pusne; prest, &c. A.D. 1340.

§ Dreit.[2] Et conta de la seisine son ael, fesaunt descente de R. a A. come fitz, de A. a J. come fitz qore demande.—*Thorpe.* Nous vous dioms qe R. vostre ael avoit un fitz eisne W., qentra apres la mort R. son pere, et continua et morust seisi; apres qi mort entra T. come fitz et heir, et morust seisi, apres qi mort nous entrames come fitz et heir; jugement si vous, qestes issu del frere puisne, vers nous qe sumes cosyn et heir del eisne fitz, puissez rien demander.—*Gayn.* R. fust eisne fitz; prest, &c.—*Et alii e contra.* De recto.

(81.)[3] § Nota qun Notorie fust attache, pur ceo qe COURT avoit suspeccion qil vient de faire instrumentz en *Quare impedit.* Nota. [Fitz. *Attachement*, 7.]

(82.)[4] § *Ad terminum qui præteriit,* dun[5] lees fait par le[6] demandant a un Elie de Choldasshe.[7]—*Thorpe.* Nous vous dioms qil lessa a Elie de Choldasshe[7] et Johane sa femme[8] et les heirs de lour deux corps, et[9] obliga lui et ses heirs a eux lour heirs et assignes; et moustra coment il est[10] lour heir;[11] jugement si accion.—*Stouf.* Nous voloms averer le lees a Elie[12] qest suppose par nostre bref.—*Non allocatur.*—*Pole.* Entre ad terminum qui præteriit.

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[1] Harl., Richard.

[2] This report of the case is from T. alone.

[3] From T. alone.

[4] From T., and Harl. 741, but corrected by the record, *Placita de Banco*, Mich., 14 Ed. III., R°. 587. It there appears that the action was brought by Richard Holman against John, son of Gilbert de Dodecote.

[5] T., du.

[6] Harl., A. le; 25184, A. aun cestre le. The lease was made by Richard, the demandant, as shown by the record.

[7] T. and Harl., J., instead of Elie de Choldasshe.

[8] T. and Harl., W. son baron, instead of Johane sa femme.

[9] T., par.

[10] Harl., a, instead of coment il est.

[11] T. and Harl., assigne, but according to the record the tenant claimed as grandson of Elias.

[12] T. and Harl., J.

A.D. 1340. *Pole.* Nothing passed by that deed; ready, &c.—And the other side said the contrary.—They were adjourned.

Avowry for rent-charge, where the plaintiff said that he had his plaint in a place called B., and the other avowed in C.; and then the avowant said that all was one and the same place, and the plaintiff said that as to parcel of two manors he who charged had a joint estate, and as to the residue he pleaded a release of the avowant's father, and *Thorpe* compelled him to say whether the place where the taking was effected

(83.) § Avowry for rent-charge granted to the avowant's father and his heirs; and he said that his father was seised of parcel; and the clause of distress was for distress in two manors.—*Stouford.* We have our plaint in a place called B. and you avow in C.; say whether all is one place, for otherwise you do not answer to our plaint.—And afterwards *Stouford* said that it was all one place. And he said that as to parcel of the two manors he who charged had only a joint estate, by fine, with his wife, who is now the plaintiff's wife; judgment whether you can distrain in that parcel. And, as to the residue, your father released to us, by this deed, for the life of our wife; judgment whether you can distrain there.—*Thorpe.* Let him say with certainty whether the place where the taking was effected is parcel of what is supposed to be comprised in the fine, or of the residue. —*Derworthy.* The place is parcel of both.—*Thorpe.* Then there are two takings; so you should have two writs.—*Derworthy.* It is all one place and is known by both names; wherefore the writ is good.—*Thorpe.* We will aver that the place is not parcel of both.—*Stouford.* You cannot, without answering to our plea which is in discharge of the whole.—*Thorpe.* To show that he shall have the two answers he has alleged that it is parcel of both, and to this we have replied that it is not parcel. —*Derworthy.* That has a double meaning, that the place is not parcel of either, or that it is parcel of one and not of the other; and, when it is so understood, he shall not have the averment, for our plea goes to the dis-

Rien passa par ceo fet; prest, &c.—*Et alii e contra.*[1] —*Adjournantur.*[2] A.D. 1340.

(83.)[3] § Avowerie pur rente charge graunte a son pere et ses heirs; et dit qe son pere fust seisi de parcele; et la clause de destresse fust en ij. manoirs. —*Stouf.* Nous pleinoms en un lieu qest apele B., et vous avowes en C.; dites si tout soit un lieu, qar autrement vous responez pas a nostre pleint.—Et puis *Stouf.*[4] dit qe tout est un lieu; et dit qe, quant a parcele de ij. manoirs, celui qe chargea navoit qe joynt estat, par fine, ove sa femme, qest ore femme le pleintif; jugement si en cele parcele puissez destreindre. Et, quant al remenant, vostre pere relessa a nous, par ceo fet, pur la vie nostre femme; jugement si illoeqes puissez destreindre. — *Thorpe.* Die en certein le quel le lieu ou la prise se fit est parcele de ceo qe est suppose estre compris deinz la fyne, ou del remenant. —*Derworth.* Le lieu est parcele de lun et lautre.— *Thorpe.* Donqes sont ij. prises; issi vous averez ij. brefs. — *Derworth.* Tout est un lieu et conu par lun noun et lautre; par quei le bref est bon.—*Thorpe.* Nous voloms averer qe le lieu nest pas parcele de lun et lautre.—*Stouf.* Vous ne poez nient, saunz respondre a nostre plee qe descharge tout. — *Thorpe.* A mostrer qil avera les ij. respons il ad alege qe cest parcele de lun et lautre, et a ceo avoms replie qe ceo nest parcele. — *Derworth.* Cest dowble, ou pur ceo qe ceo nest pas parcele de lun ne de lautre, ou pur ceo qest parcele de lun et noun pas de lautre; et, a cel entent, navera il pas averement, qar nostre plee va a descharger

Avowri pur rente charge, ou le pleintif dite qe il se pleint en un lieu qe est apele B., et lautre avowa en C.; et puis lavowaunt dite qe tute est une mesme leu, et le pleintif dit qe qant a parcele de ij. manoirs celi qe chargea avoit joint estat, et qant al remenant il pleda reles sun pere, et *Thorpe* le chacea a dire si leu ou la prise se fist fut parcel del terre compris dens la fine ou non, et il dite qe il est parcel

[1] The words *alii e contra* are not in Harl.

[2] *Adjournantur* is not in T. The jury found, as appears by the record, that nothing passed by the demandant's deed "in personam "Eliæ et Johannæ." There is another report of the case (also in Harl. 741) in which the names are given, but for them the record is the best authority.

[3] From T. alone.

[4] There appear to be some errors in the report or in the side-note.

A.D. 1340. charge of the whole; and, if he please, he can say that the place is parcel of one only, and still prove that, notwithstanding our plea, the parcel was previously charged. —*Thorpe.* Suppose that the issue were taken on both places, and it were found as to part for the plaintiff and as the residue for the defendant, what judgment would be given? — HILLARY. The avowant would have the Return. — *Derworthy.* If you avow the taking of my beasts in your several, and it be found that some of the beasts were taken in my common and some in your several, I shall recover my damages for the beasts taken in my common, and you will have the Return of those which were taken in your several; so here, if the beasts were taken in the place which is charged, he shall have the Return, and, if some were taken in the place which is discharged, the plaintiff shall recover damages. —*Derworthy.* The deed on which he has avowed is not here.—*Thorpe.* That does not matter; the deed is entered, and you have imparled on the avowry.—And then *Derworthy* held to the first plea.—BASSET. In this Replevin it is a natural plea to plead to the place.—*Derworthy.* In this Replevin I shall plead a release which will extend to the whole.—BASSET. There you do not plead as to parcel.—*Thorpe.* The release is n discharge of the whole, and he does not hold to that; judgment.—And afterwards *Thorpe* said *gratis* that the place was parcel of what was comprised in the release. — *Derworthy.* Answer then to the release. — And then they were adjourned.

was parcel of the land comprised in the fine or not, and he said it was parcel of both; and *Thorpe* took the averment that it was not; and exception was taken to this, because it was of manifold meaning. If the place be found to be parcel of one and not of the other, *quære* what will be done.

Assise of Mort d'Ancestor.

(84.) § Mort d'Ancestor for rent, in the country. The tenant pleaded *Hors de son fee.* The demandant abode judgment whether he ought to show any other title than that which was in his writ, and thereupon they were adjourned into the Bench.—*Thorpe.* We tell you that J. granted the same services to our father, so that the land is

tout; et, sil voet, il poet dire qe ceo nest forsqe parcele de lun, et prover uncore qe, *non obstante* nostre plee, la parcele devant charge. — *Thorpe.* Jeo pose qe lissu fust pris sur lun lieu et lautre, et trove fust quant a partie pur le pleintif et quant al remenant pur le defendant, quel jugement se fra? — HILL. Lavowant avera retourn. — *Derworth.* Si vous avowes la prise de mes bestes en vostre several, et trove est qe partie des bestes furent pris en ma comune et partie en vostre several, jeo recoverai mes damages de bestes pris en ma comune, et vous av[er]ez retourn de ces qe furent en vostre several; auxi icy, si les bestes furent pris en le lieu qest charge, il avera retourn, et, si parcele furent pris en lieu qest descharge, le pleintif recovera damages. — *Derworth.* Le fet par quel il ad avowe nest pas icy. — *Thorpe.* Il ny ad force; le fet est entre, et vous avez emparle al avowerie.—Et puis *Derworth.* se tient al primer plee. — BASS. En ceo *Replegiari* naturel plee est a pledre al lieu. — *Derworth.* En ceo *Replegiari* jeo pledray un relees qe sestendra a tout.—BASS. La pledez vous pas a parcele.—*Thorpe.* Le relees est en descharge de tout, et il ne se tient pas a ceo; jugement.—Et puis, *gratis, Thorpe* dit qe le lieu est parcele de ceo compris deinz le relees. — *Derworth.* Responez donqes al relees. — Et puis furent ajournes.

A.D. 1340. del une et lautre; et *Thorpe* prist laverement qe non, qe fust chalenge, eo quod multiplex. Si trove soit parcel del une et mi del autre, *quære* quei serra fait.

(84.)[1] § Mortdancestre de rente en pais. Le tenant pleda hors de son fee. Le demandant demura en jugement si autre title duist faire qe nest en son bref et sur ceo ajourne en[2] Bank.—*Thorpe.* Nous vous dioms qe J. granta mesmes les services a nostre pere, issi la

Assisa mortis antecessoris. [14 Li. Ass., 16; Fitz. *Hors de son Fee*, 29.]

[1] From T. alone, as far as the point at which the larger type ends.

[2] T., nen, instead of sur coe ajourne en. The correction is required in order to make sense, and is warranted both in Fitzherbert's Abridgment, and in the report printed next below.

A.D. 1340. within our fee. — And he produced the deed. — *Pole.* You shall not be admitted to that; for we abode judgment before.—BASSET. Could he not have said that in the country? — *Pole.* No, Sir, never, after he abode judgment and was adjourned on the other point, and upon this both sides had gone to judgment.

Mode of pleading. § In a Mort d'Ancestor for rent the tenant pleaded that the tenements were out of the fee of the demandant.—The demandant said that he had title in his writ, and prayed the assise. —The other demanded judgment whether as above. — Thereupon they were adjourned into the Bench.—*Thorpe,* for the demandant, showed, by deed, that the tenements were within the fee of the demandant.—*Pole.* You shall not be admitted to that plea, for there cannot be judgment except on the point on which the parties were adjourned.

Præcipe quod reddat. (85.) § *Præcipe quod reddat,* in respect of the manor of B. and the castle of B. — *Rokell.* The castle is parcel of the manor of B., so he demands one thing twice; judgment of the writ. — And afterwards he waived that point, and prayed aid of his co-parceners.

Supersedeas. (86.) § *Thorpe* came to the bar, and showed how one had sued execution upon a Statute Merchant, contrary to his deed, which *Thorpe* showed, and also that he had sued a writ to take the body of the debtor, &c.; and thereupon he showed a writ stating his case directed to the Justices, and he prayed a *Supersedeas* and a writ to warn the other to show cause why the latter sued contrary to his deed.—And he had it.

Debt. (87.) § Debt. To the Grand Distress the Sheriff returned that the debtor had nothing.—*Stouford* prayed the *Capias.* — *Stayngrave.* I say, for the King, that he has assets; and I pray an *Alias Distringas,* for otherwise the King will lose the issues.

terre deinz nostre fee.—Et mist avant le fet. — *Pole.* Vous navendrez pas ; qar nous sumes en jugement devant.—Bass. Ne poait il aver dit cestui en pais ?— *Pole.* Noun, Sire, apres ceo qil fust demure et ajourne sur lautre point, jammes, et sur ceo sount en jugement dune part et dautre. A.D. 1340.

§ En[1] Mordauncestre de rent le tenant pleda qe les tenementz furent hors del fee le demandant. — Le demandant dit qil avoit title en soun bref et pria lassise.—Lautre demanda jugement si *ut supra.*—Sour quei il furent ajournes en Bank. —*Thorpe,* pur le demandant, mostra par fet qe les tenementz furent deinz le fee le demandant.—*Pole.* A cel plc navendrez pas, qar il ne pout ajuger si fors le point sour quel les parties furent ajournes. Modus placitandi.

(85.)[2] § *Præcipe quod reddat* du manoir de B. et du chastel de B. — *Rokel.* Le chastel est parcele du manoir de B., issi demande il deux foitz une chose ; jugement du bref. — Et puis weyva cela, et pria eide de ses parceners. Præcipe quod reddat.

(86.)[2] § *Thorpe* vient a la barre, et moustra coment un[3] avoit suy execucion hors dun estatut marchant, contre son fet, quel il moustra, et auxi il ad suy bref[4] de prendre le corps le dettour,[5] &c. ; et sur ceo moustra bref compernant son cas direct as Justices, et pria *Supersedeas* et bref de garnir lautre pur quei il suist contre son fet.—*Et habuit.* Supersedeas.

(87.)[2] § Dette. A la graund destresse le Vicounte retourna qil navoit rien. — *Stouf.* pria le *Capias.* — *Stayngrave.* Jeo die, pur le Roi, qil ad assetz, et prie *sicut alias,* et autrement le Roi perdra les issues. Dette.

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[1] This report of the case is from Harl. 741 alone.

[2] From T. and Harl. 941.

[3] Harl., il.

[4] The words il ad suy bref are not in Harl.

[5] The words le dettour are not in Harl.

A.D. 1340. Waste. (88.) § Waste against a woman guardian of two manors.—*Thorpe.* As to two parts we are guardian in socage; judgment whether the writ lies. And as to the third part, she holds it in dower; judgment of the writ. And as to certain trees, she cut them for the repair of houses which she holds in dower; and as to the rest of the trees she cut their branches and cut underwood for firing.—*Stouford.* The plea that you hold parcel in dower is to the whole writ.—*Thorpe.* It is not. —*Stouford.* You hold that third part as guardian; ready, &c. And as to the trees she cut and sold them, without this that she used them for the repair of houses; ready, &c.—And the other side said the contrary. — And note that it seemed to the COURT that a writ of Waste lies against guardian in socage.—*Quære;* for she is nothing except a bailiff. — And note that this was pleaded before BASSET alone, his companions being at the Tower of London.

(88.)[1] § Wast vers femme gardeine de ij. manoirs. —*Thorpe.* Qaunt a les ij parties nous sumes gardeine en sokage; jugement si le bref gise. Et quant al terce partie ele tient en dower; jugement du bref. Et quant a certein arbres ele les copa en amendement des mesouns qele tient en dower. Et quant al remenant des arbres ele brauncha les arbres et copa south bois pur ardre. — *Stouf.* Cest a tout qe vous tenez parcele en dower. — *Thorpe.* Non est. — *Stouf.* Vous tenez cele terce partie en garde; prest. Et quant as arbres, ele copa et vendi, saunz ceo qele mist en amendement de mesouns; prest, &c.—*Et alii e contra.*[2] — *Et nota* qe semble a la COURT qe bref de Wast gist vers gardeine en sokage. — *Quære, quia non est nisi ballivus.* — *Et nota quod istud placitatur coram* BASS. *solo, sociis suis in Turri Londoniarum.* A.D. 1340. Waste.

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[1] From T. alone, as far as the point at which the larger type ends, but corrected by the record Mich., 14 Ed. III., R°. 547. It there appears that the action was brought by John son of John Adryan against John de Stratfeld and Alice his wife, in respect of waste alleged in the manors of Brockham and Farncombe and other lands in Surrey. The plaintiff counted, according to the record, that the defendants, holding the lands "*in custodia*" during his minority, committed waste in cutting and selling trees, &c., with this remarkable addition, "et "exulando per graves et intolera- "biles districtiones quendam Gil- "bertum Hogeman tenentem unum "mesuagium et medietatem unius "virgatæ terræ cum pertinentiis "in villenagio, et quandam Em- "mam Brokyld tenentem unum "mesuagium et medietatem unius "virgatæ terræ cum pertinentiis "in villenagio, in prædictis mane- "riis, ad exheredationem ipsius "Johannis filii Johannis."

[2] The jury found, as appears by the record, that the whole of the tenements were held in socage, that the defendants were seised "nomine custodiæ, ratione minoris "ætatis prædicti Johannis filii Jo- "hannis," the defendant Alice being his mother and next friend, and that the defendants did cut certain trees "ad exheredationem "prædicti Johannis filii Johannis." They were asked what his age was, and said "Fifteen." They were also asked the value of the tenements, and said "40*l. per annum.*" There were several adjournments afterwards, but no judgment appears.

A.D. 1340. Waste. § A writ of Waste was brought against a guardian in socage. —*W. Thorpe*, as to parcel, claimed to hold in dower, and demanded judgment of the writ. And as to the residue, he demanded judgment whether such a writ lay against him, for he said that the whole shall fall under account, and so also in the case of tenant by *Elegit*, and the like. And he said also that the guardian was, as it were, in the place of bailiff against whom a writ of Trespass lies, and not a writ of Waste. And afterwards he pleaded over *gratis*.

Trespass. (89.) § Trespass against two persons, for three pots, one pan, and two tables carried away in the third year of our Lord the King. — *Gayneford*, for one of the defendants,[1] said :—As to the pots and tables, you heretofore brought a writ of Trespass against us for one pot and one small cup which are the same goods in respect of which you now complain by another description, and for one table, on a taking made in the seventh year of the King, whereon it was found that we did not carry them away ; judgment whether you can now have an action therefor.—*Thorpe*. We are complaining in respect of a different thing from that to which you answer, and of a different time ; so you answer nothing. — BASSET. If the taking should be found to have been in a different year from that of which he has counted, he will take nothing ; wherefore you are not subject to mischief, even if you answer to his writ.—*Gayneford*. Not Guilty.— And as to the other defendant [2] he justified the taking, as bailiff of the same person that was named [3] and that denied the taking, for rent in arrear.—*Thorpe*. You took

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[1] William de Causton, as appears by the record.

[2] John atte Leye, as appears by the record.

[3] *i.e.*, of William de Causton.

§ Un[1] bref de Wast fuit porte vers un[2] gardeyn en sokage. — *W. Thorpe*, qant a parcele, clama a[3] tenir en dowere,[4] et demanda[5] jugement de bref. Et quant al[6] remenant il demanda jugement si tiel bref devers luy ygise, qar il dit qe tot cherra en acompte, et del tenant par le *elegit* auxi et *hujusmodi*. Et dit qele fuit auxi com en lieu de baillif, vers qui gist bref *de transgressione* et ne mye tiel bref. Et pus de gree il dit outre, &c. A.D. 1340. Waste.

(89.)[7] § Trespas vers deux, de iij. potes, une paele, ij. tables[8] enportes lan terce nostre seignur le Roi.—*Gayn.* dist, pur lun[9] defendant:—Quant a poetes et tables, autrefoitz vous portastes bref de trespas vers nous dune poet[10] et une pocenet qe sount mesmes les biens dont vous pleinez ore par autre noun, et dune table, dune prise[11] fait lan vij.[12] le Roy, ou trove fust qe nous enportames pas; jugement si ore de ceo accion poez aver. — *Thorpe.* Nous pleinoms[13] dautre chose qe vous responez et dautre temps; issi responez rien.—BASS. Si la prise fust trove autre an[14] qil nad counte, il prendra rien; par quei vous nestes pas a meschief, mes qe vous responez a son bref. — *Gayn.* De rien copable.— Et quant a lautre defendant[15] il justifia la prise, come baille mesme celui qest nome qad dedit la prise, pur rente arere. — *Thorpe.* Vous Trespas.

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[1] This report of the case is from L. and 25184. The word un is not in 25184.

[2] un is not in 25184.

[3] a is not in L.

[4] L., douwere.

[5] 25184, demandoms.

[6] 25184, a.

[7] From T. and Harl. 741, but corrected by the record, *Placita de Banco*, Mich., 14 Ed. III., R°. 485, d. It there appears that the action was brought by John Stevene, of Tottenham, against William de Causton and John atte Leye.

[8] The chattels taken are described in the record as "pannos lineos et "laneos, vasa, scilicet ollas et pa-"tellas, et tabulas mensuales."

[9] Harl., lun de.

[10] The spelling of this word is sometimes pot and sometimes poet in both MSS.

[11] Harl., pris &c. dun, instead of dune prise.

[12] The numeral vij. is not in Harl.

[13] Harl., pledoms.

[14] an is not in Harl.

[15] T., al remenant, instead of a lautre defendant.

A.D. 1340. them with force, &c., of your own wrong, and not for that cause; ready, &c. — And the other side said the contrary.[1]

Aid-prayer. (90.) § A tenant for term of life prayed aid of the reversioner, and said that he was under age, and prayed that the parol might demur, &c. — The demandant said said that he was of full age, and prayed that he might be viewed by the Court. — The *Venire facias* issued. — The Sheriff returned that he had nothing; so also to the *Alias Venire;* so also to the *Pluries Venire.* — Therefore SCHARSHULLE, with the assent of the whole COURT, said to the tenant, who appeared by attorney: — Forasmuch as we see that this Aid-prayer is for the purpose of delaying the demandant, and will never come to an end if the *Venire facias* be not served (for otherwise the prayee will not be distrained, and so will not lose any issues), therefore sue to cause him to come at your peril; and this shall be entered on the roll, so that if he do not come, &c., you shall answer alone, &c.

Process against an infant prayed in aid. § Upon a writ of Entry the tenant prayed aid of an infant under age, and prayed that the parol might demur. — The demandant said that the prayee was of full age. — A writ issued to cause the infant to come; also an *Alias* and a *Pluries*. — The writ was in every case returned that he had nothing. — Therefore it was said to the tenant that he should sue to cause the prayee to come on pain of answering alone.

Scire facias. (91.) § See the beginning in Easter term under the head of a *Scire facias* sued against the Abbot of Tup-

[1] The jury, as appears by the record, found a special verdict, setting forth the circumstances. Judgment was given for the plaintiff as to the taking of one pot, one small cup, and one table, with damages, but for the defendants as to taking the rest.

les[1] pristes par[2] force, &c., de vostre tort demene, et noun pas par[3] cele cause; prest, &c. — *Et alii e contra.* A.D. 1340.

(90.)[4] § Un tenant a terme de vie pria eyde de celuy en la reversion, et dit qil fut deinz age, et pria qe la paroule demurast,[5] &c. — Le demandant dit qil fut de plyn age, et pria qil fut veu de Court. — Le *Venire facias* issit. — Le Vicounte retourna qil navoit rien; auxi al *Venire facias sicut alias;* auxi al *sicut pluries.* — Par quei SCHAR., *ex assensu totius* CURIÆ, dit al tenant, qe[6] fut par atturne:—Pur ceo qe nous veioms qe cest eide prier chiet en delay del[7] demandant, et jammes ne vendra a la[8] fyn si le *Venire facias* ne[9] fut servy (qar altrement il ne serra mye destreint, issint ne perdra il nulles[10] issues) par quei siwez[11] de faire venir lautre a vostre peril; et ceo serra entre[12] en roule, issint qe[13] sil ne viegne,[14] &c., vous respondrez soul &c. Eyde priere.

§ En[15] bref dentre le tenant pria eide de enfaunt deinz age, et pria qe la parole demurast.—Le demandant dit qil fust de plein age.—Bref issit a faire venir lenfaunt, *sicut alias* et *sicut pluries.* — Fuit retourne touz jours qil navoit [rien]. — Par quei fust dit al tenant qil suyst de fere ly venir sur payn de respondre soul. Proces vers en-[fant] prie en eide. [Fitz. *Sequatur sub suo periculo,* 5.]

(91.)[16] § *Vide principium Termino*[17] *Paschæ* en un *Scire facias* suye vers Labbe de Tupholme.[18] — *W.* Scire facias.

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[1] Harl., la.
[2] T., a.
[3] T., de.
[4] From L. and 25184 as far as the point at which the larger type ends.
[5] L, demurat.
[6] L., qil.
[7] L., delle.
[8] L., al, instead of a la.
[9] ne is not in 25184.
[10] L., mye nul, instead of nulles.
[11] L., suet.
[12] entre is not in L.
[13] L., et, instead of issint qe.
[14] L., vyngne.
[15] This report of the case is from Harl. 741 alone.
[16] From L. and 25184, but corrected by the record, *Placita de Banco,* Easter, 14 Ed. III., R°. 114. The report is in continuation of No. 18 of Easter, 14 E. III.
[17] 25184, *supra.*
[18] L., Tholon.; 25184, Topholyn.

A.D. 1340. holme.— *W. Thorpe.* You shall not have the averment in this case, inasmuch as it is contrary to the record. Just as the tenant was aggrieved by the loss of his freehold, so you were equally aggrieved by the loss of your remainder, which was dependent on his estate; and consequently you shall have an Attaint.—*Derworthy.* That cannot be, because we are acquitted of the disseisin, and for that reason not in any way aggrieved either by the judgment or by the verdict; wherefore, &c.—*W. Thorpe.* You were a party to the original writ, and might have denied the plaintiff's seisin and have had your challenges of the Assise; and your right was lost by verdict when the disseisin was found; so you were aggrieved; wherefore, &c. And even though a tenant be acquitted of the disseisin, and the disseisin be found as having been effected by others named in the writ, still he shall have an Attaint on account of the grievance of his loss; so also in this case.—WILLOUGHBY. There is nothing wonderful in that; but it appears that when the person who now sues this writ was acquitted of the disseisin, and could not, in the assise have pleaded any plea in bar of the assise, she shall have the Attaint, for otherwise you might name in the writ of Assise every one who has any right to any land and so oust them from their action.—SCHARSHULLE, *ad idem.* Even though she who sues this writ had not been named in the writ of assise, that writ would have been sufficiently good; then, as she was acquitted, the case with regard to her is just as if she had not been named; and, if she had

Thorpe. Vous naverez myc laverrement en cco cas quele est acontrare del record. Auxi avant com le tenant fut greve par[1] la [perte de franctenement auxi avant estes vous greve de la perte de vostre remeindre],[2] quel fut dependant de son estat; et *per consequens* vous averez une atteynte.[3] — *Der.*[4] Ceo ne put estre, qar nous sumes aquite de la disseisine, et par tant nulle rien greve ne[5] par le jugement ne par le verdit; par quei, &c. — *W. Thorpe.* Vous fuistez partie al original, et purriez[6] aver dedit la seisine le pleintif et aver ew voz chalenges[7] a lassise;[8] et vostre dreit par verdit peri quant la disseisine fut trove; issint fustez vous greve; par quei, &c. Et, mesqe un tenant soit aquite de la[9] disseisine, et la disseisine soit[10] trove fait[11] par aultrez nomez en le bref, unqore il avera un atteynte pur la grevaunce de la perte;[12] auxi yci. — WILUGBY. Ceo nest mye merveile;[13] mes il semble qe quant celuy qe suyt ore cesti bref fuit aquite de la disseisine, et en lassise[14] nule plee put aver plede en arestacion del assise, qele[15] avera latteynte, ou aultrement en assise vous nomerez chescun homme qe dreit en ad a[16] une terre, et issint lez ousterez daccion. — SCHAR. *ad idem.* Mesqe cele[17] qe suyt cesti bref nust mye este nome en le bref dassise, le bref eust[18] este assetz[19] bon; donqes, quant ele[20] fut aqite, il est devers luy auxi[21] com il nust mye[22] este A.D. 1340.

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[1] L., de.

[2] For the words between brackets there are substituted in L. the words perde de vostre respons.

[3] L., attente.

[4] L., *W. Thorpe Derv.*

[5] ne is not in L.

[6] 25184, purretz.

[7] vostre chalenge, instead of voz chalenges.

[8] L., a la seisine.

[9] L., dun, instead of de la.

[10] L., fuit.

[11] fait is not in 25184.

[12] L., perde.

[13] L., mervoil.

[14] L., la seisine.

[15] L., qil.

[16] L., en.

[17] L., celuy.

[18] L., ut.

[19] L., asset.

[20] L., il.

[21] auxi is not in L.

[22] 25184, eust, instead of nust mye.

A.D. 1340. not been named in the writ, it is clear that she would have had the averment which she tenders; therefore it seems to me that the naming of her in the writ shall not oust her from it.—*W. Thorpe.* Sir, every one who is named in the writ of assise can deny the plaintiff's title, that is to say, the seisin, and is therefore a party to the plea; besides, since the fine upon which her estate was dependent was pleaded to the assise by one who was tenant, and that fine was rendered of no avail by the verdict, and so her right was lost, it seems to us that she shall have the Attaint; wherefore, &c. — WILLOUGHBY. It cannot be so, because when an assise passes in point and in matter of assise, although the verdict may set forth a long narrative, the attaint shall not be had upon that, but only upon the verdict, that is to say "seised " and disseised," for the rest is not parcel of the verdict. And since she was acquitted it appears as above. —*Pole.* Yes, Sir, an Attaint shall be had in respect of everything which is said in the verdict and which can prove a disseisin, and since the Assise said as above, and that verdict has disproved your right, we understand that she shall have the Attaint. — WILLOUGHBY. As to your first point, you say what is true, but since she could not have barred the assise if she had wished, and since she was afterwards acquitted, it seems as above. And we have seen this adjudged—a similar recovery on an assise of Novel Disseisin was pleaded against one who brought a writ of Formedon, in which assise he had himself pleaded to the assise by bailiff, and because the assise passed in point of assise, and the entail cannot fall within the competence of the assise to discuss, it was adjudged that he should be answered [as to a like

nome; et, si ele[1] nust pas estee[2] nome en le bref, A.D. 1340.
clere chose est qele eust[3] eu laverrement qele[4] tend;[5] par quei il semble a moy qe soun nomer en le bref ne la outera mye.—*W. Thorpe.* Sire, chescun[6] qest nome en le bref dassise put dedire le title le pleintif, saver la seisine, *ergo* partie al plee; ovesqe ceo,[7] qant la fyn sour quele son estat fut dependant fuit plede a lassise par cely qe fut tenant, et cele fyn par verdit fut anynti, issi soun dreit[8] peri, semble a nous qele[9] avera latteynte; par quei, &c.—WILUBY. Il ne put pas estre issint, qar qant un assise passe en poynt et en matere dassise, coment qe le verdit die un grant counte, de ceste[10] homme navera jammes latteynte mes sour ceo verdit, saver "seisi et disseisi,"[11] qar le remenant nest mye parcel del verdit. Et quant ele fut aquite il semble *ut supra.—Pole.* Sire, si avera de chescun[12] chose qe le verdit ad dit quele chose purra prover une disseisine, et quant lassise dit *ut supra,* qel verdit ad desprove vostre dreit,[8] nous entendoms qele[13] avera latteynte.—WYLUBY. De vostre primer dit vous ditez verite, mes quant ele[14] ne purra my aver barre lassise si ele eust[15] volu, et pus ele[14] fut aquite, il semble *ut supra.* Et nous avoms veu cesti estre ajugge[16] qe un tiel recoverir sour une assise de novele disseisine encountre un qe porta un bref de forme de doun, en quel il avoit mesme plede al assise par baillif, et pur ceo qe lassise passa en poynt dassise, et la taille ne cherra mye en descucion de lassise, agarde fut qil fust

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[1] L., sil, instead of si ele.
[2] L., este.
[3] L., qil ust, instead of qele eust.
[4] L., quel il, instead of qele.
[5] 25184, tendi.
[6] L., si chescun.
[7] ceo is not in 25184.
[8] L., dire.
[9] L., qil.
[10] 25184, quei.
[11] 25184, ou dis., instead of saver "seisi et disseisi."
[12] L., vous averez deschequne, instead of avera de chescun.
[13] L., qil.
[14] L., il.
[15] L., sil ust, instead of si el eust.
[16] L., juge.

A.D. 1340. averment]. — SCHARDELOWE. It seems to me that on account of the loss of the remainder she should have the Attaint, for she cannot now be admitted to defend her right, nor shall she have a writ of Waste, and, if I recover by a right elder than the commencement of an entail, it seems to me that every lower action is taken away.— *R. Thorpe.* Sir, it is not so, for if the entail be by fine, a *Scire facias* can very well be had, and, if by deed *in pais*, a writ of Formedon.—And to this WILLOUGHBY, SCHARSHULLE, and ALDEBURGH agreed, and ALDEBURGH said:—Even though the tenant of the land who was aggrieved by the judgment had sued the Attaint, and the oath [of the jurors] had been found true as between him and them, still I think that she who sues this writ might maintain her action. — *R. Thorpe.* Yes, Sir, certainly, for we do not understand that we can have any other recovery, if not this, &c.; and, since he refuses the averment which we tender, we demand judgment and pray execution.—And then, after the COURT had asked the Abbot whether he would accept the averment, *W. Thorpe* said, Whereas you have said that he had not anything before the fine, ready, &c., that he had. — *R. Thorpe.* You shall not be admitted to that, since heretofore you abode judgment on the other point; wherefore, &c.—WILLOUGHBY. He did not abide judgment absolutely, but "if it should appear to the Court, "&c." And this averment which he now traverses came from you. And he demanded judgment because you did not pursue that which you had previously offered to aver in maintenance of your action. — *R. Thorpe.* Sir, he shall not now be admitted to plead a new plea in order to oust us from execution; wherefore, &c. — And afterwards he accepted the averment, &c.[1]

[1] According to the record, after the adjournment to this Michaelmas Term, the plaintiffs "Johannes [de "Bernake] et Juliana [uxor ejus] "dicunt, ut prius, quod prædictus "Rogerus de Barle nunquam ali-

respondu.—SCHARD. Il semble a moy qe par la perte[1] de la remeindre il avera latteynte, qar[2] il ne put ore estre resceu[3] a defendre soun dreit, nil[4] navera bref de Waste, et, si jeo recovere dun dreit eigne[5] qe nest une taille comence, il me[6] semble qe chescun accion plus bas est anynti. — *R. Thorpe.* Sire, noun est pas, qar, si la taille soit par fyn, homme avera bien un *Scire facias*, et, si par fait en pays, un bref de forme de doun.—Et a ceo se acorderent[7] WILUBY, SCHAR., et ALD. mesqe le tenant de la terre qe fuit greve par le jugement eust suy latteynte, et le serement eust este afferme entre eux, unqore quide celuy qe suy cesti bref de meyntenir saccion. — *R. Thorpe.* Sire, certez oyl, qar nous nentendoms qe nous pooms[8] aultre recoverir aver si non cesti, &c.; et, del houre qil[9] refuse laverement quel nous tendoms, nous demandoms jugement et prioms execucion. — Et pus, apres ceo qe le COURT avoit demande Labbe sil voleit laverement, *W. Thorpe*, La ou vous avez dit qil navoit unqes rien avant[10] la fyn, prest, &c., qe cy. — *R. Thorpe.* A ceo navendrez vous mye del hour qe devant ces hourez vous estez demoure sur lautre poynt; par quei, &c.— WILUBY. Il nest mye demoure atrenche, mes si la Court veit, &c. Et cest averement quele il ore traverse si vynt[11] de vous. Et il demanda jugement del houre qe vous ne pursuyetz mye ceo qe vous avez tendu daverer avant[12] meyn en meyntenance de vostre accion. — *R. Thorpe.* Sire, il ne serra pas ore resceu de pleder novel plee douster nous dexecucion; par quei, &c.—Et pus il resceut laverement, &c. A.D. 1340.

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[1] L., le perdre, instead of la perte.
[2] L., et.
[3] MSS., respondu.
[4] nil is not in 25184.
[5] 25184, eisne.
[6] L., moy.
[7] L., *ad hoc concordarunt*, instead of a ceo se acorderent.
[8] 25184, ne pooms.
[9] L., quel.
[10] L., devant.
[11] 25184, vient.
[12] 25184, devant.

A.D. 1340.

Dower, where elopement was alleged, and, if the elopement be found, she shall not recover anything, as appears in this plea, and also at common law, &c.

(92.) In a writ of Dower the demand was made for the third part of forty messuages, and one hundred acres of land in D.—*Gayneford.* That whereof she has made her demand is the manor of T ; and as to two parts she ought not to have dower because she eloped from her husband and abode with her adulterer at S., in the country of D., without &c.; and as to the residue the husband was never seised after the marriage ; ready &c. —*W. Thorpe.* Sir, you see clearly how by his last plea he has accepted us as able to demand dower if there was seisin ; wherefore with regard to the other plea, which is contradictory to that, we pray to be discharged. —SCHARSHULLE. It is sufficiently certain that he cannot have the two pleas, and therefore we oust him from one, for the elopement goes to the whole ; therefore it is well that you answer to that, for elopement does not render a woman incapable of being answered, but

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" quid habuit in prædictis tene-
" mentis ante levationem finis præ-
" dicti. Et hoc parati sunt veri-
" ficare. Unde petunt judicium et
" executionem, &c. Et Abbas di-
" cit quod prædictus Rogerus fuit
" seisitus de prædictis tenementis
" diu ante levationem finis præ-
" dicti prout per prædictam assi-
" sam compertum fuit. Et de hoc
" ponit se super patriam. Et
" Johannes et Juliana similiter."

Process was continued until Trinity Term, 22 Ed. III., "nisi " Ricardus de Wylughbi die Mer-" curii in Septimana Pentecostes " apud Lincolniam prius venisset." Willoughby, "coram quo, &c., " misit hic recordum suum in hæc " verba :—Postea apud Lincolniam, " prædicto die Mercurii in Septi-" mana Pentecostes coram præfato " Ricardo, associato sibi Willelmo " de Skipwith, venit prædictus Ab-" bas in propria persona sua, et " prædicti Johannes de Bernake et " Juliana . . . . . non veniunt. " Ideo prædictus Abbas ad præ-" sens eat inde sine die, &c. Et " super hoc venit quidam Willel-" mus de Bathele, ex parte præ-" dictorum Johannis et Julianæ, " et petiit aliud breve de præmuni-" tione versus prædictum Abba-" tem. Et ei conceditur returna-" bile hic a die Sancti Michaelis in " xv. dies, &c. Ad quem diem " venit prædictus Willelmus de " Bathele ex parte cujusdam Wil-" lelmi Bernake, chivaler, filii et " heredis prædictæ Julianæ, et " dicit quod prædicta Juliana jam " obiit, et petiit breve pro ipso " Willelmo ad præmuniendum præ-" dictum Abbatem, &c. Et ei " conceditur returnabile hic a die " Sancti Hillarii in xv. dies, &c."

(92.)[1] En un bref de[2] douwer la demande fut fait de la terce partie de xl. mies, c. acres de terre en D.—*Gayn.* Ceo dount ele ad fait sa demande est le manere de T.; et quant a lez ij. parties ele ne deit douwer aver qar el salopa de soun baroun et demura ove soun avoutre[3] a S., en le counte de D., sanz, &c.; et quant al remenant le baroun ne fut unqes seisi pus les esposailles[4] prest, &c.—*W. Thorpe.* Sire, vous veiez bien coment par son dreyn plee il nous ad[5] accepte able a demander douwer si seisine[6] y fuist; par quei de lautre plee quel est en contrare de ceo nous prioms estre descharge.—SCHAR. Il est assetz soure qil ne put mie[7] aver lez ij. pleez, et pur ceo nous luy oustoms del un, qar lallopement est a tote; par quei il est bien qe vous respoignez a ceo, qar aloppement ne fait mye une feme nyent responable,

A.D. 1340. Dowere, on allopement fut allege, et, si trove soit, ele ne recovera riens, ut patet in isto placito, et auxi a la comune ley, &c.

[1] From L. and 25184, as far as the point at which the larger type ends.

[2] The words en un bref de are not in 25184.

[3] 25184, avoetre.

[4] L., lesposaille, instead of les esposailles.

[5] ad is not in L.

[6] L., seisi.

[7] mie is not in L.

A.D. 1340. deprives her of her action of dower; and if any one plead two pleas he shall be compelled to hold to one.—*R. Thorpe.* But, Sir, if any one by one plea accept my person as able, he has himself lost the advantage of disabling me.—WILLOUGHBY. Consider whether you will maintain your action.—*Lincoln.* She did not elope; ready, &c. *Quære* as to his matter, &c.

Dower. Upon a writ of dower brought against Henry Susee, *Gayneford* said:—As to parcel, she eloigned herself from her husband to such a place with one T., her adulterer; judgment, &c. As to the residue, never seised so that he could endow her.—*Thorpe.* You shall not be admitted to say that she eloped, because by your last answer you have accepted her as capable of being answered.—SCHARSHULLE. Both answers are to the action; therefore he must hold to one, because one applies to the whole.—Therefore he held to the adultery for the whole.—And to that they were admitted by grace.

Wardship. (93.) Upon a writ of Wardship the defendant pleaded that the infant's ancestor did not hold of the plaintiff, &c., and the plaintiff the reverse, and it was found at *Nisi prius* that he did hold of the plaintiff. And it was enquired whether the infant was married; and the jury said that he was not. It was asked what were the damages for the deforcement; and the jury said to the amount of 100*s*.—And, on the day that the parties had in the Bench, the wife of the defendant, because she was named in the writ, came, and prayed to be admitted to defend her right on account of the default of her husband.—And her admission was counterpleaded as appears in Michaelmas Term in the eleventh year.[1]—And now at this day she came not.—Therefore *R. Thorpe,* for the plaintiff, rehearsed the process, and said further that since the inquest had passed the defendant had married the infant, and prayed judgment and a writ to the Sheriff to enquire as to the value of the

[1] See vol. Y. B., 11–12 E. III., pp. 334–339.

mes la toude[1] accion de douwer; et si un home plede ij. pleez il serra chace de tener al un.—*R. Thorpe.* Mes, Sire, si un home par un plee accepte[2] ma persone[3] pur able, il ad mesme perdu lavantage de me[4] desabler.—WILUGBY. Veiez si vous voilletz meyntener vostre accion.—*Linc.* Ele ne salopa[5] pas[6]; prest, &c.—*Quære de ista materia, &c.* A.D. 1340.

En[7] bref de dower porte vers Henre Susee, *Gayn.* Quant a parcelle, el se aloigna a tiel lieu de soun baroun ov un T., soun avoutre; jugement, &c. Quant al remenant unqes seisi qe dower la pout.—*Thorpe.* A dire qele se alopa navendrez pas, qar par le drein respons lavez vous accepte responable.—SCHAR. Lun respons et lautre sount a laccion; par quei il covient qil se tiegne a lun par ceo qe lun est a tout. Par quei il se tient a la avoutrie par tout.—Et a ceo furent de grace resceue. Dowere.

(93.)[8] En un bref de Garde le defendant pleda qe launcestre lenfant ne tient pas del pleintif, &c., et il le revers, et par le *Nisi prius* trove fut qil tient de pleintif. Et fuit enquis si lenfant fuit marie; et ils disoient qe noun. Demande fut[9] as quex damages pur la deforce; et ils[10] disoient as damages de C. *s.*—Et, al jour quel ils avoint en Bank, la feme le defendant, pur ceo qele fut nome en bref, vynt, et pria destre resceu a defendre son dreit par la defaute soun baroun.—Et la resceite fuit contreplede, *ut patet Michaelis xj.*[11]—Et ore a cesti jour ele ne vynt[12] pas.—Par quei *R. Thorpe,* pur le pleintif, rehercea le proces, et dit outre qe pus lenqueste passe le defendant avoit marie lenfant, et pria jugement et bref al Vicounte Garde. [Fitz. *Jugement,* 157.]

[1] 25184, les tendy, instead of la toude.
[2] L., moy accepte.
[3] The words ma persone are not in L.
[4] L., moi.
[5] L., soy alloigna.
[6] pas is not in 25184.
[7] This report of the case is from Harl. alone.
[8] From L., and 25184.
[9] fut is not in L.
[10] 25184, qe, intead of et ils.
[11] L., xij.
[12] 25184, vient.

A.D. 1340. marriage.—SCHARSHULLE. We cannot give any other judgment but one in accordance with the terms of the verdict; and, if you wish to have any other judgment, you must wait until it be inquired as to what you have said; and therefore consider what you will pray.—*W. Thorpe.* Sir, we pray judgment on the verdict, and also conditional judgment in respect of the matter which has occurred since, and a writ to the Sheriff to enquire, as upon a writ of Dower, where the heir of the husband is vouched, for otherwise we shall be put to mischief, because if we were now to pray judgment on the verdict simply, we should accept it that the infant is unmarried, and, in that case, we should not be admitted hereafter to say the reverse.—SCHARSHULLE. What you say on that point is true, and therefore you do well to say it now, so that hereafter you may be aided by plaint.—ALDEBURGH, *ad idem.* If, between judgment given and execution sued upon a writ of Wardship, the infant marry, the plaintiff shall be aided by plaint just as upon a writ of Waste, in respect of waste committed after the judgment has been given and execution sued, &c.—*Stouford.* Sir, that is a case in which something has occurred after judgment, but in this case the judgment is still to be given, and if it be given on the verdict it is thereby supposed that the infant is unmarried; therefore we pray that you will enter that which we have said, so that hereafter we may have a remedy.—SCHARSHULLE. At any rate, pray such judgment as you will, at your peril, for I do not think you will pray any other judgment than one on the verdict.—Therefore they spoke with the lord of Willoughby, their client, and

denquere de la value de mariage.—SCHAR. Nous ne poioms altre jugement[1] rendre mes solonc ceo qe le verdit ad chaunte; et, si vous voilletz altre jugement aver, jeo crey qil covent qe vous attendez[2] tanqil soit enquis de vostre dit; et, pur ceo, veiez ceo qe vous voillez[3] prier.—*W. Thorpe.* Sire, nous prioms jugement sour verdit, et auxi, pur le fait avenu de pusne temps, jugement condicionel et bref al Vicounte denquere,[4] com en bref de douwere la ou le heir le baroun est vouche, ou altrement nous serroms mys a meschef, qar si nous priassoms ore jugement sour verdit simplement nous accepteroms[5] lenfant desmarie, et, si sic, nous navendroms mye altrefoith a dire le revers.—SCHAR. Vous ditez verite de cel, et pur ceo vous faitez bien qe vous le ditez ore, issint qe altre foith vous poiez estre eide par pleynt.—ALD., *ad idem.* Si, par entre jugement rendu et execucion suy hores dun bref de garde, lenfant soit marie, le pleintif serra eide par pleynte, auxi com[6] en bref de wast, de wast[7] fait apres le jugement rendu et execucion suy, &c.—*Stouff.* Sire, la iliad chose avenu pus le jugement, mes yci le jugement est a rendre, et si ceo soit rendu sur verdit par tant est suppose lenfant estre desmarie; par quei nous prioms qe vous voillez entrer ceo qe nous avoms dit, issint qe altrefoith nous pooms aver remedie.[8]—SCHAR. Au mayns priez til jugement cum vous voilletz, a vostre peril, qar jeo ne crey mye qe vous voillez aultre jugement prier mes sour le verdit.—Par quei ils enparlerent[9] ove le A.D. 1340,

[1] L., chose.
[2] L., attendrez.
[3] 25184, voletz.
[4] L., de quere.
[5] L., acceptoms.
[6] com is not in L.
[7] The words de wast are not repeated in L.
[8] L., remedy.
[9] L., emparlerent.

A.D. 1340. prayed judgment on the verdict.—And so they had it, &c.

Right de Rationabilibus Divisis.

(94.) The Abbot of Kirkestede brought a writ of Right[1] *de rationabilibus divisis* against Alesia Countess of Lincoln, and counted, by *Pole*, that tortiously she refused to allow reasonable divisions to be set between the land of the said Abbot in Coningsby and the land of the said Countess in Bolingbroke, Stikeney, and Sibsey,[2] as they ought and have been used to be, which divisions and bounds begin towards the South at a certain place which is called Maplebush, descending in a straight line, &c., and in like manner (said he) towards the East and towards the West, beyond which divisions and bounds the said Countess ought not to have anything towards the West, yet the said Countess has drawn to her fee, &c., so many acres of moor, and of marsh, tortiously, &c., and tortiously for this reason that the right is his; and he alleged the taking of esplees as in the sale of moor, and heath, and furze, &c.; and he tendered suit in deraignment. *W. Thorpe* defended, and said that this land was parcel of the manor of Bolingbroke, which manor the Countess held by gift of the King made to her and to Ebulo Lestrange, formerly her husband, and to the heirs of Ebulo, and said that Ebulo died without heir of his body,

[1] It appears in the record that the cause was removed from before the Sheriff into the Court of Common Pleas, on the petition of the Abbot.

[2] The name of this place appears as Sybessete in the record.

seignour[1] de Wilugby[2] lour client, et prierent jugement sour le verdit.—*Et sic habuerunt, &c.*[3] A.D. 1340.

(94.)[4] Labbe[6] de Kirkestede[7] porta un bref de dreit de renable devises[8] devers Alays[9] Countesse[10] de Nichole, et counta, par *Pole*, qe atort ne seoffra renables devises[11] estre faitz[12] entre la terre le dit Abbe[13] en Conyngesby et la[14] terre la dite Countesse en Bolyngbroke, Stikeney, et Sibsey, com estre deyvent et soleynt,[15] queux[16] divises et boundes[17] comencent devers le Southe a un certein lieu qe est appele Mapelbosqe,[18] et descendant linealment, &c., auxi, dit il, vers le Est[19] et vers le Weste, outre quex divises et boundes la dit Countesse rien ne deit aver vers le West, la ad la dite Countasse attreit[20] a soun fee, &c., tantez acres de more, et de mareis, a tort, &c., et pur ceo atort que cest soun dreit ; et lez espleez prist com en vente de more, et roos, et[21] junke,[22] &c., et tendi suyte a dreygner.—*W. Thorpe* defendi, et dit qe ceste terre fuit parcelle del manere de Bolyngbroke, quel manere ele tient de doun le Roi fait a luy et a Eble[23] Lestrange, jadis soun baroun, et as heires Eble,[23] et dit que Eble[23] morust sanz heire de soun

Droit de Renables Devises.[5] [Fitz. *Ayde*, 23.]

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[1] L., seynour, instead of le seignour.

[2] 25184, Wilby.

[3] In 25184 are added the words *Quære aliter, &c., si sit veredictum quod puer maritetur, &c.*

[4] From L., and 25184, but corrected by the record *Placita de Banco*, Mich., 14 Ed. III., R° 230.

[5] The words Droit de are not in L., and the word Devises is there written Dimises.

[6] L., and 25184, le Prior.

[7] L., Kirstede; 25184, Kyrkestede.

[8] L., demises.

[9] L., Alas; the record, Alesia.

[10] L., Counte.

[11] L., demise.

[12] L., fait.

[13] L., and 25184, Prior.

[14] L., lentre la.

[15] 25184, solient.

[16] L., quez.

[17] L., bondes.

[18] 25184, Mappelbuske. The boundaries with the names of places are set forth in detail in the record.

[19] L., lesste, instead of le Est.

[20] L., atret.

[21] L., de.

[22] L., quantqe.

[23] L., Ible.

A.D. 1340. and so the reversion[1] rested in the person of Roger Lestrange, cousin and heir of Ebulo. And (said he) we pray aid of him.—*Pole.* We have fixed a tort in your person in that you have drawn our land to your fee; wherefore to maintain that tort you ought not to have aid any more than upon a writ of Intrusion.—SCHARDELOWE. In that case the writ in itself supposes the tort, but this is a writ of Right upon which you have to set the divisions according to the right and in perpetuity, and the Countess cannot be a party to do this. And upon a writ of Admeasurement of Pasture, against a woman who holds in dower, we have seen aid granted; so also in this case.—HILLARY. That was reasonable, and so it is in this case; therefore, let her her have the aid, &c.[2]—See the like in Easter Term in the twelfth year, &c.[3]

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[1] It is called a reversion in the record also.

[2] Subsequently, as appears by the record, the Countess and Roger Lestrange jointly put themselves on the Grand Assise against the Abbot, as to the better right, citing the King's charter of grant. The Abbot imparls, and Roger does not return. The Countess then answers for herself, and puts herself on the Grand Assise. After the election of the Grand Assise, and some adjournments, the Countess says that the Abbot and Convent of the one part, and she of the other part, have granted and acknowledged (*concesserunt et cognoverunt*) by indenture, that certain lands described are parcel of the manor of Bolingbroke and within its soke, and the Abbot and Convent have released their right in the same, saving their right of common. The deed (in French) is recited at length. The Countess then prays judgment whether the Abbot can have action against her, contrary to his deed. The Abbot cannot deny his deed, and judgment is given for the Countess as to the matters therein included. The Abbot then prays the Grand Assise as to the residue. The Court doubts whether it should proceed to take the Grand Assise, and gives a day. On the day the Countess does not appear, and judgment is given for the Abbot as to the residue. Because, however, there might be collusion, the Sheriff was commanded to summon a jury (Nisi prius, &c.) "ad recognoscen-" dum quale jus, &c." They found the title of the Abbot and Convent, and found that there was no collusion.

[3] See Vol. Y. B., 11–12 Edw. III., pp. 500, 501.

corps, issint est la reversion demuraunt [1] en la per- A.D. 1340.
sone Roger Lestrange, cosyn et heire Eble.[2] Et prioms eide de luy.—*Pole.* Nous avoms attache un tort en vostre persone qe vous avez attreit [3] nostre terre a vostre fee; par quei de meyntener cel tort vous ne devez eyde aver neynt plus qen un bref de intrusion. —SCHARD. La le bref en luy mesmes suppose le [4] tort, mes ceo est un bref de dreit [5] en quel vous estez affaire lez devises en le dreit et en la perpetuite, a quei faire ele [6] ne put estre partie. Et en un bref damesurement [7] de pasture, devers femme qe tient en douwere, nous avoms veu leyde estre grante; auxi yci. —HILL. Ceo fuit resoun, et auxi est il yci; par quei eit leyde, &c.—*Vide simile Paschæ xij. &c.*[8]

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[1] L., de manere.
[2] L., Ibile.
[3] L., attret.
[4] le is not in 25184.
[5] L., direit.
[6] L., il.
[7] L., de mesurement.
[8] The words in Latin are not in L.

A.D. 1340. Cosinage. (95.) Sir Gilbert Talbot brought a writ of Cosinage against Ralph de Wilynton and Eleanor his wife, and demanded against them the castle of Caer Kenny and the commote of Iskenny, &c., and alleged the taking of the esplees as in "lowage" of the castle, and in homage, and rent, and arrears of rent, fines, and amercements, and other kinds, &c.—*Stouford* produced the King's charter whereby the King had given to the tenants the same castle and the same commote (and it was mentioned in the charter that the said tenements came into the King's hand through the forfeiture of John Maltravers) and prayed aid of the King.—And he had the aid.—And now *Stouford*, for Ralph and Eleanor, vouched to warranty one Margery Giffard, desiring that she should be summoned, &c.—*R. Thorpe* you shall not be admitted to that, for heretofore, in this same plea, you prayed aid of the King, which aid you have, and that is in lieu of voucher; wherefore, &c. And if this voucher were permitted now, it would be with intent to give you to the value against the vouchee; and you shall have to the value against the King, if you lose, for he has so signified his pleasure; and so you will have twice over to the value, which would be contrary to law.—*Stouford.* We are endeavouring by our voucher to discharge the King and to charge another, to

(95.)[1] Sire Gilbert Talbot porta un bref de Cosinage devers Rauff de Wilynton[2] et E., sa femme, et demanda devers eux[3] le Chastel de Kirkenny[4] et le Commot[5] de Yskenny, &c., et lia les esples com en lewage[6] du chastel, et en homage, et rente, et areres de[7] rente, fyns,[8] et amerciaments, et altres maneres, &c.—*Stouff.* myst avant la chartre le Roy par quele le Roy lour[9] avoit done mesme le[10] chastel et mesme le commot[11] (et la chartre fist mencioun qe[12] lez ditez tenementz devyndrent en la mayn le Roi par la forfeiture Johan[13] Mautravers), et pria eide de Roy.—*Et habuit.*—Et ore *Stouff.*, pur R.[14] et E., voucha a garrant une Margerie Giffard, qe serra somons, &c.—*R. Thorpe.* A ceo navendrez vous mye, qar altre foyt, en mesme cesti plee, vous priastez eyde de Roi, quel eide vous avetz,[15] quel est en lieu de voucher; par quei, &c. Et si cesti voucher fuit seoffret a ore, ceo[16] serreit a tiel entente de vous doner a la value devers le vouche; et devers le Roi vous averez a la value si vouz perdrez, qar il ad[17] maunde sa volunte; issint averez ij. foith a la value, quele chose[18] serreit en countre ley.—*Stouff.* Nous sumes par nostre voucher a descharger le Roi

A.D. 1340. Cosinage. [Fitz, *Voucher*, 108.]

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[1] From L., and 25184, as far as the point at which the large type ends. This report relates to the same case as the report No. 79 of Mich., 13 Edw. III., and has been, as far as possible, corrected by the same record, *Placita de Banco*, Mich., 13 Edw. III., R°., 448 d. It has, however, special reference to the admissibility of the voucher, and, as the voucher was not allowed, the matter relating to it does not appear on the roll.

[2] L., W.; 25184, Wylingham.

[3] 25184, lui.

[4] 25184, K.

[5] L., Comut.

[6] 25184, leuage.

[7] L., et.

[8] L., finis.

[9] lour is not in L.

[10] le is not in L.

[11] L., comut, instead of le commot.

[12] qe is not in L.

[13] 25184, J.

[14] 25184, le R.

[15] 25184, averetz.

[16] L., a ceo.

[17] L., niad.

[18] 25184, qe, instead of quele chose.

A.D. 1340. the effecting of which the Court should be favourable. Besides, it might be that Margery enfeoffed the King, and bound herself to warrant to him, and to his heirs, and to his assigns, and that we shall have the warranty against her as assignees of the King; wherefore, &c.—SCHARSHULLE. Then that ought to be shown by special cause, for, when you have had aid of the King, that is in lieu of vouching another; and if you had vouched another, and the voucher had been permitted, and the vouchee had entered into warranty, you would not afterwards have had another voucher; so also it seems in this case.—*Stouford.* Sir, in that case I should have placed my answer in the mouth of another, but in this case I am still a party myself; wherefore it seems, though the King has signified his pleasure to you, that I am at large to plead what plea I will.—SCHARSHULLE (with the assent of the whole COURT). You shall not have the voucher unless you show cause. (*Quære* the case in the third year.[1] But this agrees with the case in the ninth year[2] on a writ of Formedon *per* HERLE.)—*Stouford.* We understand the voucher to be sufficiently good without showing cause, but, to expedite the matter, we tell you that it was ordained that all those who were of the quarrel of the Earl of Lancaster should be disinherited and that their lands should be seized into the King's hand; and we tell you that one J. Giffard, father of this same Margery whom we vouch, was of the same quarrel (and at that time was seised of this land), for which reason his lands were seized into the hand of King Edward, the father, &c. And afterwards in the time of the present King it was ordained by Statute that all those persons and their heirs should be restored; and by reason of that ordinance, the said Margery, as heir of the said John Giffard, sued to the King and had

[1] Y. B., Easter, 3 Edw. III., p. 15, No. 14.

[2] Y. B., Easter, 9 Edw. III., p. 15, No. 26.

et a charger altre, a quel chose faire la Court deit A.D. 1340.
estre favorable. Ovesqe ceo, il put estre qe Margerie enfeffa le Roi, et obligea luy a[1] garrantir a luy, et a sez heires, et a sez assignez, et qe nous averoms le garrantie devers luy com assigne le Roi; par quei, &c. —SCHAR.[2] Cella covent donqe estre moustre par cause especiale, qar, quant vous avez[3] eu leide[4] de Roy, quel est en lieu de voucher autre; et si vous ussez vouche aultre, et le voucher seoffert, et il entra en la garrantie, vous nussez apres autre voucher eu;[5] auxi semble il yci.—*Stouff.* Sire, la jeo usse[6] mys mon respons en autri bouche, mes yci suy[7] jeo mesme unqore partie; par quei il semble, quant le Roi vous ad maunde sa volunte, qe jeo suy a large a pleder quel plee qe je voille.—SCHAR. (par assent de tout la COURT). Vous naverez mye le voucher si vous ne moustrez cause.—*Quære anno tertio. Sed concordat anno ix°*, en bref de forme de doun, par HERLE.).—*Stouff.*[8] Nous entendoms le voucher asset boun sanz cause moustrer, mes, pur deliverer, nous vous dioms qe ordene fut qe touz iceux qe furent de la querel le Count de Lancastre furent desheritez[9] et lour terrez seisis en la mayn le Roi; et vous dioms qun J. Giffard, pere mesme cesti Margerie qe nous vouchoms, fuit de mesme la querele, et a tiel temps fuit seisi de mesme cesti terre, par quei sez terrez furent seisiz en le mayn le Roi E., le pere, &c. Et pus en temps le Roi qore est ordine fut par estatut qe toutz iceux[10] et lour heires furent restituts, par quel ordinance la dite Margerie, com heire le dit J. Giffard, suyt al Roi et avoit restitucion, et pus granta

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[1] L., de.
[2] L., *Stouff.*
[3] L., laverez.
[4] L., lede.
[5] 25184, ja apres vouche autre, instead of apres autre voucher eu.
[6] usse is not in 25184.
[7] L., seo.
[8] *Stouff.* is not in 25184.
[9] The words furent desheritez are not in L.
[10] L., ceux.

A.D. 1340. restitution, and afterwards granted and confirmed to the King the same tenements to have and to hold to him and his heirs and assigns, and afterwards, while the tenements were in our seisin, released, &c., with warranty, and for such cause we vouch her.—*R. Thorpe.* These are two causes; wherefore hold you to one.—And to this the COURT agreed.—And *Stouford* did hold to one, that is to say, to the confirmation made to the King.—*R. Thorpe.* Sir, you see clearly how the law compels him in this case to show a cause for his voucher, in which case he ought to show a cause such that I can have an answer to it; and now he has shown his cause by means of a deed which was made while the tenements were in a seisin which we cannot traverse. Besides, he does not show the deed of which he speaks in order to have this voucher as assignee, whereas the law is such that one who has to vouch as assignee must show both the deeds. Besides, the deed that you have produced, that is to say, the King's charter, proves that at the time at which the gift was made to you the King was seised by virtue of a cause other than the deed of Margery, and so this warranty of which you speak, according to the supposition of the charter, is of no avail; judgment, &c.—*Stouford.* These are several pleas; wherefore hold you to one.—*R. Thorpe.* They occur naturally in law, wherefore we should have them, though there were twenty of them, and one of them we take upon your own count; wherefore, &c.—*Stouford.* As to the first point, when the restitution was ordained, the freehold immediately became Margery's, for when any one has a right to any one's claim of freehold it shall be adjudged to be his. And when she executed such a deed as she did in the King's favour that is equivalent to a feoffment. And, as to the second point, we tell you that such deeds made in the King's favour ought legally to remain in his possession. And, as to the third point, the charter and that which is

et conferma a Roi mesmes lez tenementz a aver et tener a luy et a cez heires et a cez assignez, et pus, en nostre seisine relessa, &c., ove garrantie, et par tiele cause nous la vouchoms.—*R. Thorpe.* Cez sount ij. causes; par quei tenez vous a lun.—*Et ad hoc consensit* CURIA.—*Et sic fecit ipse* al confermement[1] fait a Roy.—*R. Thorpe.* Sire, vous veiez bien coment ley luy chace en ceo cas de moustrer cause de son voucher, en quel cas il deit moustrer tiel cause a quei jeo puisse aver respons; et ore ad il moustre sa cause par fait qe se fit en seisine quel nous ne pooms mye traverser. Ovesqe ceo, il ne moustre mye le fait dount il parle daver ceo voucher com assigne, ou la ley est tiel qe celuy qe deit voucher[2] com assigne covient moustrer ambedieux les faitz. Ovesqe ceo, le fait quel vous avez moustre avant, saver la chartre le Roi, prove qe al temps de doun fait a vous le Roi fut seisi[3] par autre cause qe par le fait Margerie, issint cel garrantie dont vous parlez, a ceo qe la chartre suppose, anyenti; jugement, &c.—*Stouff.* Ceux sunt plusours ples; par quei tenez vous a un.—*R. Thorpe.* Ils[4] echesount[5] en ley, par quei nous averoms les,[6] tot fuissent ils xx., et un deux nous pernoms de vostre demonstrance demene; par quei, &c.—*Stouff.* Quant al primer poynt, quant la restitucion fut ordine,[7] mayntenant franctenement fut a Margerie, qar quant homme ad dreit a nully cleyme de franctenement ceo serra ajugge a luy. Et quant ele fist[8] un tiel fait a Roi ceo contervaut[9] un feffement. Et quant al seconde poynt nous dioms qe tiels faits qe se fount au Roi devyent par ley demurer devers luy. A.D. 1340.

[1] L., *ratione* del confermacion, instead of *ipse* al confermement.
[2] L., qest vouche instead of qe deit voucher.
[3] seisi is not in L.
[4] L., Ilis.
[5] 25184, chesount.
[6] les is not in L.
[7] 25184, ordeigne, here and elsewhere throughout the report.
[8] L., fust.
[9] 25184, countreval.

A.D. 1340. supposed in the charter may exist consistently with that which we have said; wherefore, &c.—And to this ALDEBURGH agreed.—SCHARSHULLE. Neither by the ordinance alone, nor by suit, could she be restored, unless she had corporal restitution out of the King's hand, for, if the King had aliened to another before suit, it would have been necessary to have had a writ to have the same tenements re-seized into the King's hand, and that livery of the tenements should have been afterwards made to the party; and by your own charter we cannot understand anything else but that the King had the tenements by some course other than the deed of Margery; therefore your cause is insufficient; therefore answer.—*Stouford* traversed the ancestor's seisin.[1]—And the other side said the contrary.

Cosinage. Gilbert Talbot brought a *Præcipe quod reddat* in respect of a castle.—*Stouford.* We vouch to warranty Margaret, sister and heir of John Giffard.— *Thorpe.* You prayed aid of the King which is in lieu of voucher; therefore you shall not be admitted to vouch another.—*Stouford.* Had I vouched any one other than the King I should have lost my answer; but my answer is saved; for the same reason also the voucher, particularly since the voucher is in discharge of the King.—*Thorpe.* You affirmed your estate to be by gift of the King, when you prayed aid of the King, and now you suppose your estate to be through another, and this is contrary to that which you supposed before; wherefore, &c.—*Stouford.* One may vouch a person through whom he has not any estate, as being the assignee of another, or as for other special cause.—SCHARSHULLE. You may well have the voucher for special cause, but not without special cause; wherefore, say something else.—*Stouford.* John Giffard, ancestor of Margaret, was seised of these tenements, and was of the quarrel of Thomas, Earl of Lancaster, and therefore King Edward, father of the present King seized these tenements by reason of his forfeiture. By a statute made

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[1] The *consanguineus*, on whose seisin the demandant claimed, was, as appears in the record, Llewellyn ap Rees Vaghan.

Et, quant al tercie poynt, la chartre et la supposaille[1] de la chartre[2] put estere[3] ovesque[4] nostre dit; par quei, &c.—*Et ad hoc* ALD. *consensit.*—SCHAR. Par la soul ordinance, ne par suyte, ele ne fust my restitute,[5] si ele[6] navoit restitucion corporel[7] hors de la mayn le Roi, qar,[8] si le Roi eust[9] aliene a autre devant la suyte, il covensist[10] aver eu[11] bref daver resseisi mesmes lez tenements en la mayn le Roi, et pus daver este livere a la partie; et nous ne pooms par vostre chartre demene altre entendre mes qe le Roi lez avoit par aultre cours qe par le fait Margerie; par quei vostre cause est mayns suffisiant; par quei responez.—*Stouff.* traversa la seisine launcestre.—*Et alii e contra.* A.D. 1340.

Gilbert[12] Talbot porta *Præcipe quod reddat* dun chastel.—*Stouf.* Nous vochoms a garrant Margarete, soer et heire Johan Giffard.—*Thorpe.* Vous priastis eid du Roi qest en lieu de voucher; par quei a voucher autre ne serrez resceu.—*Stouf.* Si jeo usse vouche autre qe le Roi jeo perdrei respons; mes mon respons est sauve; par mesme la resoun le voucher, nomement de pus qe le voucher est en descharge du Roi.—*Thorpe,* Vous affermastes vostre estat estre par doun du Roi, quant vous priastes eid du Roi, et ore vous supposez vostre estat estre par autre, quel chos est contrier a ceo qe vous supposiez devant; par quei, &c.—*Stouf.* Homme put voucher cely par qi il nad mye estat, com autri assigne, com par autre cause especial.—SCHAR. Par cause especial vous laverez bien, mes ne my sanz cause especiale; par quei dites autre chose.—*Stouf.* Johan Giffard, auncestre Margarete, fu seisi de ceux tenementz, et fu de la querele Thomas, Counte de Lancastre, par quei le Roi E., le pere, seisi ceux tenementz par sa forisfeture. Par statut feit en temps le Roi qor est ceux qe Cosinage.

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[1] L., le supposail, instead of la supposaille.
[2] The words de la chartre are not in 25184.
[3] L., estre.
[4] 25184, ov.
[5] L., restitucion.
[6] 25184, et si.
[7] 25184, ceo par celle.
[8] L., quant.
[9] L., ust.
[10] 25184, covient.
[11] eu is not in L.
[12] This report of the case is from Harl 741 alone.

A.D. 1340 in the time of the present King those who were of the quarrel of the Earl of Lancaster and their heirs were restored to their inheritance, and, after that restoration by statute, this Margaret, cousin and heir of John Giffard, granted and confirmed these tenements to the King, and to his heirs, and to his assigns. Afterwards, this same Margaret released the tenements to us with warranty, by this deed, while they were in our seisin. (But he did not show the deed granting and confirming the tenements to the King.) Thus we vouch Margaret.—*Thorpe.* You show two causes; therefore, hold to one.—And they were compelled to do so.—And they held to this that they vouched as assignees.—*Thorpe.* Put the matter with certainty whether Margaret was seised by means of the restoration given by the statute or not, because if you say that she was seised and enfeoffed the King, then we can have a counter-plea by the Statute[1] but otherwise not.—*Stouford.* Even though she might not have been seised by corporal possession, yet by the operation of the statute the King was ousted from the fee and right of the freehold, and so the estate which he had afterwards was by the confirmation.—SCHARSHULLE. In virtue of that estate he could not have had assise.—*Thorpe.* You shall not be admitted to say that the King had the tenements by Margaret's deed, because the charter in virtue of which you have prayed aid of the King proves that the King had the tenements through the forfeiture of John Maltravers.—*Stouford.* Even though the King had them through the forfeiture of John Maltravers, nevertheless, when restoration was made by statute, all the mesne estates were defeated.—*Thorpe.* By general words of the statute the King's estate, which he had by another title, was not defeated. And you do not show that you have restoration by process sued against the King; and you cannot vouch as assignee of the King, if the King's estate was not through this person, &c.—Besides, you do not show the deed [of confirmation made] to the King.—*Stouford.* The deed which was made in the King's favour ought never to be delivered to any other, but will remain with him. Besides, you counter-plead our voucher for divers causes; therefore, hold to one.—SCHARSHULLE. He takes the whole on the matter which you have given him; therefore, &c. — *Pole.* One John Salwey, as heir of John Giffard, had restoration.—*Stouford.* Margaret was found to be heir by *Diem clausit extremum*, and the King held her to be heir when he accepted the confirmation.—SCHARSHULLE. Inquest of office is not proved, and you do not show that

[1] 3 Edw. I. (Westm. 1), c. 40.

furent del querele et lour heirs furent restituz a lour heritage, A.D. 1340.
apres quel restitucion par statut ceste Margarete, cosin et heir Johan Giffard, granta et conferma ceux tenementz al Roi, et a ces heires, et a ces assignez. Pus meme cele Margerie en nostre seisine par ceò fait relessa ov garrantie. (Mes il ne mostra pas le fet al Roi.) Issint vouchoms Margarete.—*Thorpe.* Vous moustrez ij. causes; par quei tenez a lun.—Et a ceo furent il chacez.—Et ces tindrent a ceo qil voucherent com assigne.—*Thorpe.* Mettez en certain la quel Margarete fu seisi en la restitucion del statut ou ne mye, qar, si vous diez qele fu seisi et enfeffa le Roi, donqes pooms aver contreplee par Statut et altrement ne mye.—*Stouf.* Tut ne fust ele mye seisi par corporel possession, *tamen* par le fesance[1] del statut le Roi fuit ouste de fee et dreit de fraunctenement, issint estat qil avoit apres fust par le confermement.—SCHAR. De cel estat il nust pas eu lassise.—*Thorpe.* A dir qe le Roi avoit les tenementz par le fait Margarete ne serrez vous resceu, qar la chartre par quel vous avez prie eid du Roi prove qe le Roi avoit les tenementz par la fourfeture Johan Maltravers.—*Stouf.* Coment [qe] le Roi avoit par la fourfeture Johan, ne pur quant la, quant restitucion fu fait par statut, tous les meens estatz furent defetes.—*Thorpe.* Par general parol de statut ne fut pas lestat le Roi, qil avoit par autre title, defet. Et vous ne moustrez pas qe vous avez restitucion par procese suy devers le Roi; et vous ne poez com assigne le Roi voucher, si lestat le Roi ne fu parmy cely, &c. Estre ceo, vous ne moustrez pas fet fait al Roi. — *Stouf.* Le fet qe se fit au Roi ne deit jammes estre livere a autre mes demura. Estre ceo vous contrepledez[2] nostre voucher par divers causes; par quei tenez a un.—SCHAR. Il prent tut de la matere qe vous ly avez livere; par quei, &c.—*Pole.* Un Johan Salwey, com heir Johan Giffard, avoit[3] restitucion.—*Stouf.* Ele fut trove heir par *diem clausit extremum*, et le Roi la tint com heir quant il prist confermement.—SCHAR. Enquest doffice nest pas prove,

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[1] Harl., fe feance.
[2] Harl., ne contrepledez.
[3] Harl., et avoit.

A.D. 1340. she was adjudged heir by judgment between parties; therefore, say something else.—And he traversed the seisin of the demandant's cousin.

Dower. (96.) § Upon a writ of Dower, brought against a guardian, the guardian made default.—*Gayneford* held to the default.—*Rokell.* You cannot hold to the default, because we are not tenant of the freehold.—And this objection was not allowed.—And afterwards he waged his law, &c.

Right. (97.) § Upon a writ of Right the tenant admitted the seisin of the demandant, and said that the demandant enfeoffed one J. de E., and bound himself, &c., to warrant to J., his heirs and assigns, which J. enfeoffed the tenant (and he showed a deed to this effect), and said further that the demandant released to the tenant (and he showed a deed to that effect) and joined the mise upon these two deeds, and the mise was accepted.

Note: Scire facias. (98.) § Upon a *Scire facias* the Sheriff returned:—"I have sent to the bailiff of the Liberty, who has "answered, 'I have given notice, &c., to be *Coram* "'*vobis*, &c.'" And because such garnishment would be understood as garnishment to be *Coram Rege*, the Court adjudged the *Non omittas.* And note: the garnishment would have been of no avail unless it had been expressed as being by such an one, &c.

View demanded. (99.) § In a writ of Formedon in the Descender, on a gift made to the demandant's father in tail, three acres of land were demanded.—*Gayneford* demanded view.—*W. Thorpe.* You ought not to have view, because here-

et vous ne moustrez pas qel fu juge heir par jugement entre parties; par quei ditez autre chose.—Et traversa la seisine soun cosin. A D. 1340.

(96.)[1] § En un[2] bref de dowere, porte vers gardeyn, il[3] fist defaute.—*Gayn.* prist a la defaute.—*Rokell.* Vous ne poiez mie[4] a la defaute prendre, qar nous ne sumes mye tenant du franctenement.—*Et non allocatur.* —Et pus[5] il gagea la[6] ley, &c. Dowere.

(97.)[7] § En un bref de dreit le tenant conust la seisine le demandant, et dit qil enfeffa un J. de E., et obligea, &c., de garrantir a luy et a ces heires et ces assignes, le quel J. luy enfeffa (et moustra cel fait), et dit outre qe le demandant, relessa a luy (et moustra cel fait),[8] et sour eux[9] deux faitz joynt la myse, et la mise[10] fust accepte. Dreit.

(98.)[11] § En un *Scire facias* le Vicounte retourna:— *Mandavi ballivo libertatis qui, &c., Scire feci, &c., essendi coram vobis,*[12] *&c.* Et pur ceo qe[13] tiel garnissement serreit[14] a entendre destre[15] devant le Roi il agarda le *non omittas.*—*Et nota:* le garnissement nust value sil[16] nust dit par un tiel, &c. Nota: Scire facias.

(99.)[17] § En un bref de[18] forme de doun en le descendre, dun doun fait al pere le demandant en la taille, demandez furent iij. acrez de terre.—*Gayn.* demanda la vewe:—*W: Thorpe.* La veuwe ne devez Veuwe demande. [Fitz. *View*, 95.]

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[1] From L., and 25184.
[2] The words En un are not in 25184.
[3] 25184, qe.
[4] mie is not in L.
[5] pus is not in 25184.
[6] la is not in L.
[7] From L., and 25184.
[8] fait is not in 25184.
[9] 25184, ceo.
[10] 25184, qe, instead of et la mise.
[11] From L., and 25184.
[12] L., *nobis.*
[13] L., si.
[14] L., serra.
[15] destre is not in 25184.
[16] L., si.
[17] From L., and 25184, as far as the point at which the larger type ends.
[18] The words un bref de are not in 25184.

A.D. 1340. tofore we brought a writ against you and demanded the same tenements, when you, upon that writ, had view, and afterwards abated our writ, and so view is not necessary upon this writ; judgment, &c.—SCHARDELOWE. If you are to deprive him of the view you must say something more, for you do not show that this case falls within the Statute.[1]—*W. Thorpe.* Willingly, Sir. And we tell you that by the former writ we demanded four acres and a half of land, whereof these three acres now in demand are parcel, by virtue of a gift made to our father and our mother, whereupon the tenant came, and as to one acre and a half he could not deny the gift, and as to the three acres he traversed the gift, whereupon at that time we admitted with him that with regard to that portion the gift was different, wherefore as to those three acres our writ abated, and now we have resuscitated this writ in order to demand the same three acres of land; wherefore, &c.—SCHARDELOWE. Now it seems that he shall have the view, for this writ now brought is on a title other than that on which the first writ was brought; and as to what you say that these are the same tenements, he cannot know that except by view, for without view he cannot know whether they are the same tenements as those comprised in the first record or others.—*W. Thorpe.* Sir, he might allege that in any case in the world, even though the case fell within the Statute;[1] and yet, if it did so fall, the allegation would not avail him.—SCHARDELOWE. Let him have the view, &c.—And he had it by judgment, &c.

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[1] 13 Edw. I. (Westm. 2), c. 48.

aver, qar aultre foith nous portames bref devers vous A.D. 1340.
et demandames mesmes lez tenementz, ou vous, en cel bref, aviez[1] la vewe, et pus abatiez nostre bref, issint nest mye la vewe en cesti bref necessarie; jugement, &c.—SCHARD. Si vous luy toudrez[2] la veuwe il covent dire plus, qar vous ne moustrez mye qe cest en cas destatut.—*W. Thorpe.* Sire, voluntiers. Et vous dioms qe par celuy bref nous demandames[3] iiij. acres de terre et demi, dont cez iij. acrez ore en demande sount parcel, par un doun fait a nostre pere et a nostre miere, ou il vynt, et quant a un acre et demi il[4] ne put dedire le don, et quant a lez iij. acres transversa le doun, ou a cel temps nous conussames ovesqe luy qen dreit de ceo le doun fut altre, par quei en dreit de ceux iij. acres nostre bref abati, et ore nous avoms resuscite[5] cesti bref a demander mesmes lez iij. acrez de terre;[6] par quei, &c.—SCHARD. Ore semble il qil avera le veuwe, qar cesti bref ore[7] porte est sour aultre title[8] qe ne fust lautre bref; et ceo qe vous ditez qe[9] ceux sount mesmes lez tenementz ne put il saver[10] si non par la veuwe,[11] qar sanz la veuwe it ne put saver sils soient mesmes lez tenementz compriz deynz le primer recorde ou aultres. —*W. Thorpe.* Sire, cel put il allegger en chescun cas de monde,[12] mesqe ceo fut en cas destatut; unqore la ne luy vaudreit[13] mye.—SCHAR. Eit la veuwe, &c.—Et[14] par agarde, &c.

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[1] 25184, avez.
[2] L., tendrez.
[3] L., demaundoms.
[4] il is not in L.
[5] L., resussite.
[6] The words de terre are not in L.
[7] ore is not in L.
[8] title is not in L.
[9] qe is not in 25184.
[10] 25184, salver.
[11] 25184, par la veuwe non, instead of non par la veuwe.
[12] L., demaunde, instead of de monde.
[13] L., vendra.
[14] Et is not in 25184.

A.D. 1340. View.

§ In a Formedon in the Descender the tenant demanded view. —*Thorpe.* Heretofore we brought a writ against you in respect of these tenements and of others, upon which you had view and said that two acres were not given as the writ supposed, and as to the residue you confessed our action, wherefore, we recovered parcel through your confession, and with respect to the residue we could not deny your allegation; and in respect of that parcel in respect of which our writ then abated, we now bring this writ; judgment whether you ought to have view. — *Stouford.* You prove that this writ is brought in respect of a different quantity and on another title, and in that case we cannot know whether these tenements are parcel of the tenements previously demanded except by view.—*Thorpe.* So you might say even though the writs agreed in the quantity of the demand.—Afterwards view was granted by judgment.

Trespass. . . . . in a personal plea against several persons, where one was not admitted without the others.

(100.) § One John brought his writ against three persons in order that they might be summoned to answer to him, &c., as tenants of certain tenements, &c.—And the writ purported that they and the tenants of the same tenements had made and repaired the walls on the shores of the sea within certain bounds, and that the plaintiff, through default in the repair of the said walls, had lost thirty acres of land by overflow of water from the sea, &c. And the plaintiff's writ purported that there was a title by prescription.—And on the first day one came and would have pleaded, and he was not admitted to do so in the absence of the others.

Execution of Statute Merchant.

(101.) § Amice Polin sued execution of a Statute Merchant against John de Chiltern, on his own recognisance, and was seised.—Afterwards John sued a writ to cause Amice to come to answer wherefore she had sued execution contrary to her deed.—She came.—John showed an indenture which purported that if he paid twenty marks on a certain day, and if he caused one Alice to be made a nun within a certain time, and found sustenance for her in the meantime, then the Statute Merchant should be held for null. And he produced an acquittance for the twenty marks, and said that

§ En[1] forme de doun en descendre le tenant demanda la vewe.—*Thorpe.* Autrefoith nous portames bref devers vous de ceux tenementz et de autres, ou vous aviez la vewe et deistes qe ij. acres ne furent pas donez com le bref supposa, et quant al remenant vous conussastes nostre accion, par quei nous recoverimes parcel par vostre conisance, et del remenant nous ne purroms dedir; et de la parcel de quel nostre bref abati nous portoms ceo bref; jugement si vous devez la vew aver. —*Stouf.* Vous provez qe ceo bref est porte dautre quantite et dautre title, ou nous ne poms saver si ceux tenements soient parcel des tenementz autrefoith demandez si noun par la vewe.—*Thorpe.* Auxi purrez dire mes qe les brefs se accordassent en quantite de la demande.—Pus la vewe fu grante par agarde. A.D. 1340. Vewe.

(100.)[2] § Un Johan porta son bref vers iij. qil fussent somons a respondre a ly, &c. come tenants de certein tenements, &c.—Et voleit le bref qe eux et les tenantz de mesmes les tenementz avoint feit et reparaille les baillez sour le costes de la mere deinz certein boundes, et qe le pleintif, pur defaute de les ditz walles reparailler, avoint perdu xxx. acres de terre par sourounder des ewes de la mere, &c. Et soun bref voleit title de prescripcioun.—Et al primer jour un vint et voleit avoir plede, et ne fu point resceu en absence des autres. Transgressio . . en ple personel vers [plus]ours, ou un ne fut resceu . . . . saunz les autres.

(101.)[2] § Amyce Polin suy execucion de un Statut Marchaunt vers Johan de Chiltern, de sa reconisance demene, et fust seisi.—Pus Johan suy bref de fair venir Amyce[3] a respondre pur quei el avoit suie execucion countre son fet.—El vint.—Johan moustra endenture qe voleit sil paiast xx. marcz a certein jour, et sil feit un Alice estre feit nonayn deinz certein temps, et la trovast sustenance en le meen temps, qe adonqes lestatut serra tenuz pur nul. Et mist avant acquitance des xx. marcz, et dit qil avoit este prest, et Execucion de Statut Marchant.

[1] This report of the case is from Harl. 741 alone.

[2] From Harl. 741 alone.

[3] Harl. Alice.

A.D. 1340. he had been ready and still was ready to cause Alice to be made a nun, and that she lived at Holywell, near London, at his cost, until, &c.—*Grene.* As to the acquittance, not our deed. — And the other side said the contrary. — (And the deed was dated in one county, and Holywell is in another.) And as to the rest (it was said on behalf of Amice) Alice has her sustenance at our cost and not at yours. —*Thorpe.* You cannot have two issues, for, if one be found in your favour, you have attained your purpose, and, if the other be found against you, we cannot have the advantage of it, nor you the penalty.—*Grene.* It is necessary for you to maintain both, and, therefore, it is necessary that we should have an answer to both, for otherwise the COURT would hold as not denied by us that one of the two points on which issue is not taken. — SCHARSHULLE (JUSTICE). If all the conditions had been in one county, the whole matter could have been tried by one inquest; not so when they are in different counties.—*Grene.* If we had produced different acquittances for the twenty marks, you would have had to answer as to them all.—*Thorpe.* What you say is true; but the issue would be taken only on one, because one found in your favour is sufficient, and you can choose that which is the most to your advantage.

Common voucher pleaded in . . . .

(102.) § Walter Turke and Ida his wife brought a writ of Right in the Guildhall of London against Joan, who was the wife of Elias de Suffolk, and counted as in nature of a Formedon. And J. Veel made [the gift] to John de Lincoln and Agnes his wife. They made the descent to Ida, the demandant, as to daughter and heir, &c.—*The Tenant* vouched Edmund cousin and heir of Elias de Suffolk. — *Thorpe.* Our father gave the tenements demanded to Elias your husband, whose heir you vouch, and to you, and to the heirs of you and your husband, &c., which estate your husband con-

unqore est de la fer estre fait nonain, et qil demoert a Haliwell juxt Londres, a ces costages, tanqe, &c.—*Gren.* Quant al aquitance, nient nostre fait.—*Alii e contra.*—Et la date fuit en un counte et Haliwell en autre.—Et, quant al autre part, el est a nostre sustenance et nient a la vostre.—*Thorpe.* Vous ne poez aver ij. issues, qar, si lun soit trove pur vous, vous estes a vostre purpos, et, si lautre soit trove countre vous, nous ne pooms aver lavantage de ceo, ne vous la penance.—*Gren.* Il covient qe vous meintenez les ij., par queux il covient qe nous eioms respons a tut deux, ou auterement la Court tendreit anient dedit de nous lautre point sour quel issu nest pas pris.—SCHAR. (JUSTICE). Si totes les condiciouns fuissent en un counte, homme le pout trier tut par un enquest; *non sic* en divers countes.—*Gren.* Si nous meissoms avant divers aquitances des xx. marcz, vous respondriez a tutes.—*Thorpe.* Vous ditez verite; mes lissue ne serra pris fors sur un, qar un trove pur vous suffit, et vous poez eslire le plus a vostre avantage. A.D. 1340.

(102.) [1] § Walter Turke et Ide sa femme porterent bref de dreit en la Gildehale de Londres vers Johane, qe fu la femme de Ely de Sothfolk, et counterent en . . . . nature de forme de doun. Et J. Veel fist a J. de Lincolne et Agnes sa femme. Fesoint la descente a Ide qe demande com a fille et heir, &c.—*Le Tenant* voucha Esmond, cosin et heir Ely de Suffolk.—*Thorpe.* Nostre pere dona les tenementz demandez a Ely vostre baroun, qui heir vous vouchez, et a vous, et as heires de vous et de vostre baroun, &c., le quel estat Voucher comune plede en

[1] From Harl. 741 alone.

A.D. 1340. tinued during the whole of his life, and you are, this day, tenant of the same estate without this that he whom you vouch or any of his ancestors ever had any other estate by the gift, &c.; judgment whether to such a voucher, &c.—*Ham.* The common law gives us the voucher at large, and the Statute [1] does not restrain it in this case. — Afterwards he waived the voucher for fear of losing his answer if he had abode judgment thereon, and he traversed the gift.

Per quæ servitia.

(103.) § William de Thorpe sued the *Per quæ servitia* against John de Leukenore and Elizabeth his wife.—*Stouford.* They held of our Lord the King as of the honour of Huntingdon, and the King granted the honour and their services to the Duke [of Cornwall],[2] the reversion being regardant to the King, and we do not understand that the pair of us is put to claim or attorn. — *Pole.* You shall not be admitted to say that you hold of any one other than our cognisor, because see here a record which proves that you attorned to our cognisor in virtue of the grant of one T. Besides, the ancestor of the husband brought a writ of Mesne against one L., the ancestor of our cognisor. Judgment, &c. Besides, we will aver that you held of our cognisor on the day of the cognisance; ready, &c. — A day was given to search in the Treasury for evidence for the King, and the issue was not received.[3]

Discontinuance alleged.

(104.) § On a *Præcipe quod reddat* a man was vouched by the name of William Dister, of Birmingham, chaplain, and process was continued by that name until he came into Court, and on the day on which

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[1] 3 Edw. I. (Westm. 1), c. 40.

[2] The record shows that the Duke to whom reference was made was Edward, Duke of Cornwall.

[3] The case was not ended until 15 Edw. III., when a jury found for the plaintiff, and the defendants did homage to the plaintiff in court, as appears by the record. *See* H., 15 E. III., No. 7.

vostre baroun continua tot sa vie, et vous, huy ceo jour, tenant mesme lestat saunz ceo qe cely qe vous vochez ou nul de ces auncestres unqes autre estat navoint par le doun, &c.; jugement si a tiel voucher. —*Ham.* La comune ley nous done le voucher a large, et lestatut nel restreint pas en ceo cas.—Pus il waiva le voucher, pur doute de perdre respons sil ust demore, et traversa le doun. A.D. 1340.

(103.) [1] § William de Thorpe suy le per *quæ servitia* vers Johan de Leuqenore et Elizabeth [2] sa femme.— *Stouf.* Il tindreit de nostre Seignour le Roi com del honour de Huntindone, et le Roi granta le honour et lour services al Duks, la reversion regardant al Roi, et nentendoms pas qe paraille de nous est mys de clamer ne attourner.—*Pole.* A dire qe vous tenez dautre qe de nostre conissour navendrez pas, qar veez sy recorde qe prove qe vous attournastes a vostre conissour par la grant un T. Estre, launcestre le baroun porta bref de Meen vers un L., auncestre nostre conissour. Jugement, &c. Estre ceo, nous voloms averer qe vous tenistes de nostre conissour jour de la conisance; prest, &c.—Un jour fust done de cercher en tresorie evidens pur le Roi, et lissue nient resceu. [Per] quæ servitia.

(104.) [3] § En *Prœcipe quod reddat* homme fu vouche par noun de William Dister de Bermingham, chaplein, et proces continue par tiel noun tant qil vint en Court, et al jour qil entra en garrantie cel parol Discontinuance allege.

[1] From Harl. 741 alone, but corrected by the record *Placita de Banco*, Easter, 14 Edw. III., R°. 229. It is another report of the case which occurs in T. as No. 32 of Easter, 14 Edw. III.

[2] Harl., A.

[3] From Harl. 741 alone.

A.D. 1340. he entered into warranty the word Dister was omitted and on all the subsequent days.—*Thorpe* took exception on the ground of discontinuance.—ALDEBURGH (JUSTICE). The process was good as against the tenant until the vouchee entered into warranty, and afterwards the process is continued against the vouchee by the name in which he entered into warranty.—And the process was adjudged good.

Quare impedit.

(105.) § Henry, Earl of Derby, brought a *Quare impedit* against the Master of the Hall of Merton, of Oxford.—On the day that the parties had in Court the General Attorney of the Earl disavowed the suit, and the Master prayed, since he had not come into Court upon process, that the Justices would do according to law, and said that he did not know of the suit except by the summons, so that the deceit was not in him, if any there were.—Afterwards a writ came out of the Chancery to cause the writ of *Quare impedit* to come into the Chancery.—*Thorpe.* When process is commenced before you, you ought not to send writ or record until the processes be terminated by judgment.—Nevertheless the writ was sent into the Chancery, and the Master prayed that this matter might be entered on the roll.—So it was.—In this case it would be a great mischief to the Master in case he were disturbed from his presentation by such a writ.

Recognisance.

(106.) § In the King's Bench, in Michaelmas Term, in the fourteenth year, in a case in which a recognisance for a certain sum of money had been made to two persons, one of them died. Execution for the whole was granted to him who survived. And the JUSTICES said that the like course would be taken in action of Debt on the ground of an obligation made to two persons, that is to say, that the survivor, or his executors, in the event of his death before execution, would have execution for the whole.

Dister fu entrelesse et a touz lez jours apres.—*Thorpe* chalengea la discontinuaunce. — ALD. (JUSTICE). Le proces fut boun vers le tenant tanqe le vouche entra en la garrantie, et apres le proces est continue vers le vouche par tiel noun com il entra en la garrantie.— Et le proces fut agarde bon. A.D. 1340.

(105.)[1] § Henre, Counte de Derbe, porta *Quare impedit* vers le Mestre de la Sale de Mertone de Oxeneford.—Al jour qe les parties avoient en Court le general attourne le Counte desavowa la sute, et le Mestre pria, del hure qe nest venu en Court par proces, qe les Justices feissent la lay, et dit qil ne saviet de la sute fors par la somons, issint qe la desseit ne fut pas en ly, si nul y fut. — Pus bref vient hors de Chauncellerie pur fer venir le bref en Chauncellerie. — *Thorpe.* Quant proces est comence devant vous, ne devez pas mander bref ne record tant qe le proces soit termine par jugement.—*Tamen* le bref fut maunde en Chauncellerie, et le Mestre pria qe cest chose fut entre en role.—*Sic fuit.*—En ceo cas serroit grant meschef al Mestre en cas qil fut destourbe del presentement par tiel bref. Quare impedit.

(106.)[2] § En Bank le Roi, *Michaelis xiiij°*, ou[3] reconisance de certein somme de deners fu fet a deux, lun morust. Execucion fu grante a cely qe sourvesqi del entere. Et auxi disoient les JUSTICES qe freit de accion de Dette par force de obligacion fet a deux, qe cely qe survist, ou ces executours, sil devie devant execucion, avera execucion de lentere. Reconisance.

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[1] From Harl. 741 alone.

[2] From Harl. 741 alone, where, however, the case appears as of Hilary Term, 14 Edw. III., though Michaelmas Term is mentioned in the report itself.

[3] MS., en.

A.D. 1340. Assise of Novel Disseisin.

(107.) § Richard Del Ile brought Novel Disseisin against Thomas Tendring and Emma his wife, in the county of Essex.—*Thomas* and *Emma*, as to parcel, said that there ought not to be assise, because Gerard Del Ile, grandfather of the plaintiff, whose heir he is, gave this parcel by fine, in fee tail, to one John, whose estate the tenants have (and mentioned how), and said that, since the fine, the donor released all his right while the tenements were in the seisin of one T., and demanded judgment whether in opposition to the fine, by which his ancestor divested himself, the plaintiff ought to have assise. — *The Plaintiff.* John, whom you assert to have had a fee tail, continued that estate and died without issue, and, after his death, we, as cousin and heir of Gerard the donor, entered, and were seised, until, &c.—*Thomas* and *Emma.* Now we demand judgment, since you make title as heir of Gerard, whether, in opposition to his release, you ought by virtue of such title to have assise.—*The Plaintiff* said that it was not the deed of his ancestor. — The other side said the contrary. — Afterwards, at another day, the husband made default. The wife was admitted, and pleaded the same plea to the assise, and, as to the residue, she pleaded in bar on the ground that Gerard Del Ile, uncle of the plaintiff, whose heir he is, acknowledged, by fine, the tenements to be the right of John Del Ile by his gift, to hold to John and Maud, and to the heirs of John, whose estate Emma had, and demanded judgment whether, in opposition to the fine by which the plaintiff's ancestor disinherited him and his heirs, he who is heir ought to have assise.—*Richard.* You do not show how you have their estate.—This objection was not allowed.—*Richard.* Gerard, our grandfather, gave these tenements to Gerard, whom you suppose to be a party to the fine, in fee tail, saving the reversion, &c., and this Gerard tenant in fee tail continued his estate, without divesting himself, and

(107.)[1] § Richard[2] del Ile porta la novele disseisine vers Thomas Tendring et Emme sa femme, en le counte de Essex. — *Thomas et E.*, qant a parcele, disent qe assise ne deit estre, qar Gerard del Ile, ael le pleintif, qi heir il est, dona cel parcel a un Johan par fine en fee taille, qi estat le tenantz ount (et disent coment), et disent qe, pus la fine, en la seisine un T. le donour relessa tut son dreit, et demanderent jugement si contre la fine, par quel soun auncestre se dimist, devereit assise estre. — *Querens.* Johan, qe vous dites aver fee taille, continua et morust saunz issue, apres qi mort nous com cosin et heir Gerard le donour entrames et fumes seisi, tanqe, &c.—*Thomas et E.* Ore demandoms jugement, del hour qe vous fetes title com heir Gerard, si countre soun relees devez par tiel title aver assise. —*Le pleintif* dit qe ceo ne fut pas le fet soun auncestre. — *Alii e contra.* — Pus, a autre jour, le baron fist defaute. La feme fut resceu, et pleda mesme le plee al assise, et, qant al remenant, ele pleda en barre par la resoun qe Gerard del Ile, uncle le pleintif, qi heir il est, par fine, conust les tenementz estre le dreit Johan del Ile de soun doun, a tener a[3] J. et Maude et as heires J., qi estat Emme ad, et demanda jugement si contre la fine par quel soun auncestre desherita a ly et ces heires sil qi est heire deive assise aver.—*Rich.* Vous ne moustrez mye coment vous avez lour estat.—*Non allocatur.*—*Rich.* Gerard, nostre ael, dona ceux tenementz a Gerard, qi vous supposez estre partie a la fine, en fee taille, salvant la reversion, &c., le quel Gerard tenant en fee taille, continua son estat,

A.D. 1340. Assisa Novæ Disisine. [14 Li. Ass., 18.]

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[1] From Harl. 741 alone. The case appears to be that which occurs in T. as No. 21 of Hilary Term. 15 Edw. III.

[2] Harl., Gerad.

[3] Harl., de.

A.D. 1340. died seised without issue; and after his death we entered as cousin and heir of the donor, and were seised until, &c. — *The Tenant.* We do not admit the gift in fee tail; but you shall not be admitted to say that he continued that estate in opposition to the fine to which your ancestor was a party, for that would be contrary to the Statute.[1] — *Richard.* The Statute holds good in respect only of fines duly levied; but fines levied by tenant in fee tail are adjudged null by Statute,[2] wherefore by such fines you cannot oust us from this plea. Besides, the Statute *Quia fines* [1] does not restrain any one from counterpleading except parties to fines and their heirs (by which are to be understood those who claim title as heirs to the persons themselves who were parties to the fines); but we make title as heir of another ancestor, and they do not deny the entail; judgment, and we pray the assise.

Quare impedit.

(108.) § Ralph de Neville brought a *Quare impedit* against William, son of John de Bliton, and others, for that tortiously they did not permit him to present to the church of Reepham which it belongs to him to do by reason of the lands of the heir of John de Bliton being in his hand. — *Thorpe.* As to all except William, son of John, and one William de Burton, they have committed no tort, and claim nothing. — *Blaik.* You shall not be admitted to say that contrary to the defaults which you have made, for you have appeared only after distress. — This objection was not allowed. — Therefore to the country as to them upon the disturbance. — *R. Thorpe.* As to W. de Burton, he is parson of the same church; judgment whether a writ of this nature lies against him.—*Blaik.* He may be a disturber as well as any one else. — HILLARY. He cannot be adjudged a disturber in a case in which another is named [in the writ].

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[1] 27 Edw. I. Stat. 1 (*De finibus levatis*), c. 1.

[2] 13 Edw. I. (Westm. 2), c. 1.

sanz dimise, et morust seisi saunz issue, apres qi mort nous entrames com cosin et heir le donour, et seisi fumes tanqe, &c.—*Tenens.* Nous ne conussoms pas le doun en fee taille; mes a dire qil continua navendrez pas contre la fin a quel vostre auncestre fu partie, qar ceo serreit countre statut. — *Rich.* Statut ne tint fors des finz duement levez; mes finz levez par tenant en fee taille sount ajuggez pur nuls par statut, par quei par tiel finz ne nous poez ouster de ceo ple. Estre se, lestatut *Quia fines* ne restreint nul homme a contrepledre fors les parties a les finz et lour heires, qest a entendre de ceux qi clament title com heirs a mesmes ceux qi furent parties a les finz; mes nous fesoms title com heir dautre auncestre, et il ne dedient pas la taille; jugement, et prioms lassise. A.D. 1340.

(108.)[1] § Rauf de Neville porta *Quare impedit* vers William, fitz Johan de Blitone, et autres, qe a tort ne ly seoffrerent presenter al eglise de Repham qe a ly appent par reson des terres del heir Johan de Blitone en sa mein esteaunt. — *Thorpe.* Quant a touz estre William, fitz Johan, et un William de Burtone, il nount fet nul tort, ne rien ne clament.—*Blaik.* A ceo navendrez pas contre les defautes qe vous avez feit, qar vous estez venuz par destresse.—*Non allocatur.*—*Ideo ad patriam* vers eux sour destourbance. — *R. Thorpe.* Quant a W. de Burtone, il est persone de mesme leglise; jugement si tiel bref vers ly gise. — *Blaik.* Il put estre destourbour si bien com autre homme.—Hill. Il ne put mie estre ajuge destourbour Quare impedit.

[1] From Harl. 741 alone.

A.D. 1349. —Nevertheless, he said that he had committed no disturbance. — The other side said the contrary. — And, as to W. de Bliton, he said that he was the same person through whose non-age the plaintiff claimed the wardship, and said that he was of full age at the time at which the church became vacant. — The other side said that he was under age. — And so to the country. — *R. Thorpe.* William, the son of John, was born in the city of Lincoln, and we pray a jury from that place.

Willoughby arraigned.

(109.) § R. Willoughby was arraigned before PARNING, SADINGTON, and SCOT, JUSTICES for this purpose; and he came in custody of mace-bearers.—PARNING said to him that the King, trusting in the highest degree in his loyalty and discretion, made him his Lieutenant in the King's own Court, when the King went over sea, and that he had then perverted and sold the laws as if they had been oxen or cows, whereof, by clamour of the people about the same, matter was shown to the King. Therefore, said PARNING, you shall hear our Commission, and what shall be said to you.—And when the Commission of Oyer and Terminer, &c., was read, *Willoughby* said that he was Chief in the highest Court of the land, wherefore they ought not, in a lower Court, to take cognisance of trespass done there.—PARNING. You say truly as to error in such a matter; but if you have trespassed against the King you shall answer where he pleases. — *Willoughby.* The King will not be admitted without having been informed by indictment or by suit of a party with pledges to prosecute.—PARNING. He is informed by the clamour of the people. — *Willoughby* had counsel, by assignment of the COURT.—And several bills were read which were not affirmed by pledges, to which there was no suit. And amongst others the commonalty of the county of Nottingham complained that, whereas many were indicted there for breach of the forest laws, of whom some were fined to the King half a mark and some 10*s.*, Willoughby took of some 10 marks and of

la ou autre est nome. — *Tamen*, il dit qil navoit fet nul destourbance.—*Alii e contra.*—Et, quant a W. de Blitone, il dit qil fut mesme la persone par qui noun age le pleintif clama la garde, et dit qil fut de plein age al temps de la voidance. — *Alii* qe deinz age.— *Et sic ad patriam.—R. Thorpe.* W., fitz Johan, nasqui en la cite de Nicol, et prioms pays de ceo lieu. A.D. 1340.

(109.)[1] § R. Wilby fust arene devant PARN., SAD., et SCOT, JUSTICES a ceo faire, qe vient en garde de macers. — PARN. lui dit coment le Roy, affiaunt soveraynement en sa leaute et sen, lui fist son lieu tenant en sa place demene, quant il passa la mier, et coment puis il avoit bestourne et vendi les leys com boefe ou vache, dount par clamour de poeple pardecea et de la chose est moustre a Roi. Par quei vous orrez nostre commission et ceo qe homme vous dirra. — Et la commission lieu doier et terminer, &c., *Wilby* dit qil fust mestre en la pluis haut place de la terre, par quei de trespas fait illoeqes en place pluis bas il ne deivent conustre. — PARN. Derrour en tiele chose vous dites verite; mes si vous eiez trespase au Roi vous respondrez ou lui plerra. — *Wilby.* Le Roi ne voet estre resceu sans [estre] apris par enditement ou par suyte de partie atache par plegge. —PARN. Il est apris par clamour de poeple.— *Wilby* ad conseil par livere de COURT. —Et plusours billes furent lieux qe ne furent pas affermes par plegges, a quex nul suyte. Et entre autres la comune del counte de Notingham se pleindrent, et la ou plusours furent endites illoeqes pur la foreste, dount ascuns firent fine au Roi par demi marc, et ascuns pur x. *s.*, et Wilby prist dascuns x. marcz, Wilby arene.

[1] From T. alone.

A.D. 1340. some 10*l.* to lessen the fine. — PARNING. They ought to have been imprisoned for three years if they were convicted. — *Willoughby.* They remained a long time in custody, and had purchased their deliverance ; wherefore, with the consent of SCROPE, who was then Chief Justice, they were fined, because otherwise the King would not have had anything. And he said, moreover, that he did not take anything on that account.—Another bill by the commonalty of the county of Lancaster was to the effect that, whereas he procured people to be indicted, and said first to the indictors that no deliverance should be made without them, yet he took beasts and other gifts for deliverance of the persons indicted by others who were insufficient. — PARNING. In such case an inquest should have been taken by the indictors and others. — *Willoughby.* The Sheriff is commanded to make a good jury come ; wherefore the affair must be conducted in that way. — PARNING. Certainly, if the indictors be not there, it is not well for the King.—*Willoughby.* It is error then, and not malice on the part of the Justice.—*Thorpe.* You cannot say that, for you did the reverse at that time between others.—*Willoughby.* It is the custom for the Justice to go to the indictors, to encourage and inform them ; and as to the presentation of gifts, I took nothing.—Another bill was at the suit of a party, namely, Laurence de Lodelowe, knight, for that Willoughby took of him 10 marks to reverse a judgment, and took from another 20 marks to affirm it, and did affirm it. And he assigned the receipt in the suburb of London, and the judgment was to have been reversed in Middlesex.—And exception was taken to the bill for that they could not take cognisance of trespass committed in another county.—PARNING. Part was committed in one county and part in another ; wherefore he cannot have any other bill nor before any other persons. —*Willoughby.* He should then have a writ of trespass on his case.—And afterwards *Willoughby* threw himself on the King's mercy, because he would not plead with

dascuns x. *li.* pur abreger la fine.—PARN. Il duissent aver eu prisone de trois aunz sil ussent este atteyntz. — *Wilby.* Il demorerent longement en garde, et avoint purchace lour deliverance; par quei, par assent de SCROPE, qadonqes fust Chief, il firent fyne, qar autrement le Roi nust ew rien. Et dit outre qil ne prist rien par cele cause. — Autre bille par la comune del counte de Lancastre, ou il procura gentz estre endites, et premist as enditours qe nule deliverance se freit sanz eux, la prist il bestes et autres douns pur les deliverer par autres meyns suffisauntz. —PARN. En tiel cas enquest serra pris par enditours et autres. — *Wilby.* Homme comande a Vicounte de faire venir bon pais; par quei solonc ceo covient overer. — PARN. Certes, si enditours ne y soient, il nest pas bien pur le Roi.—*Wilby.* Cest errour donqes, et noun pas malice de Justice. — *Thorpe.* Ceo ne poez dire, qar vous feistes le revers adonqes entre autres. —*Wilby.* Il est manere de Justice daler a les enditours de les conforter et enformer; et quant a presentement de douns, jeo ne preisse rienz.—Autre bille a suyte de partie, saver de Laurence de Lodelowe, chivaler, de ceo qil prist de lui x. marcz de reverser un jugement, et il prist dautre xx. marcz pur affermer le, et afferma. Et assigna la resceite en la suburbe de Loundres, et jugement reverse en Middelsexe.—Et la bille chalenge de ceo qil ne pount conustre de trespas fait en autre counte. — PARN. Partie se fist en un counte, partie en un autre; par quei il ne poet autre bille ne devant autre aver. — *Wilby.* Il covient donqes aver bref sur son cas.—Et puis *Wilby* se mist en la grace le Roy, pur ceo qil ne voet pledre ove A.D. 1340.

A.D. 1340. his liege lord.—The lord of WAKE said to him that the last was the wisest plea that Willoughby ever pleaded. —And note that PARNING said that he was arraigned at the suit of the King, for things done in other counties, for the ease of himself, so that he might not be led from county to county.—And afterwards the King caused him to be led from one county to another, &c. And he could not be out upon mainprise.

son seignur lege.—Le seignur de WAKE lui dit qe ceo A.D. 1340.
fust le pluis sage plee qunqes mes Wilby pleda.—
Et nota qe PARN. dit qil fust arene a la suyte le
Roi de choses en autres countes en ees de lui, qil ne
freit mener de counte en autre.—Et puis le Roi lui fist
mener de counte en autre, &c. Et il ne poet estre
par maynprise.

HILARY TERM

IN THE

FIFTEENTH YEAR OF THE REIGN OF

KING EDWARD THE THIRD

AFTER THE CONQUEST.

HILARY TERM IN THE FIFTEENTH YEAR OF THE REIGN OF KING EDWARD THE THIRD AFTER THE CONQUEST.

A.D. 1340-1. Assise of Novel Disseisin, in which an infant under age was found a disseisor with force, &c., and was not adjudged to prison.

(1.) § Assise of Novel Disseisin.—Two persons were found disseisors with force and arms, and one of them was under age, that is to say, of the age of eighteen years, and he was not adjudged to prison, but the other was.

Fieri facias on a recognisance (upon which an *Audita querela* had been sued, &c.) by the Justices, and a *Venire facias* was prayed against the party who had sued contrary to his deed, and he did not have it, because the *Fieri facias* was not returned.

(2.) § Execution upon a recognisance by *Fieri facias*, which was returnable now at the Octaves of the Purification. The defendant came by virtue of a writ out of the Chancery rehearsing his case; and the recognisance was made on a certain condition—that if the wife of the demandant should be convicted of adultery between her and the person who made the recognisance, &c., and, if not, then that the recognisance should be held as null. And he showed the deed, and said that she was not convicted, and prayed a writ to warn the plaintiff to show cause why he sued contrary to his

DE TERMINO HILLARII ANNO REGNI REGIS EDWARDI TERTII A CONQUESTU QUINTO DECIMO.[1]

A.D. 1340–1. Assisa novæ disseisinæ, ou enfant deinz age fuyt trove disseisour a force, &c., et ne fuyt pas agarde a la prison. [14 Li. Ass., 17.]

(1.)[2] § Assise [de] novele disseisine.—Deux furent trovez disseisours a force et armes, et lun deinz age, saver de xviii. aunz, et il ne fust pas agarde a la prisone, et lautre fust.

Fieri facias hors de un reconisance, sur quei *audita querela* fuyt siwy, &c., par Justices, et fuyt prie un *Venire facias* vers la partie qe avoit siwy contre son fait, et *non habuit* pur ceo que le *Fierifacias* ne fuyt pas retourne.

(2.)[3] § Execucion hors dune reconisance par *Fieri facias*, qest retournable ore a les utaves de la Purificacion. Le defendant vient par bref hors del Chauncellerie reherceaunt son cas; et la reconisance fust fait sur certeine condicion qe si la femme le demandant fust atteynt davowetrie entre lui et celui qe fist la reconisance, &c., et si noun qe la reconisance serreit tenu pur nulle. Et moustra le fet, et dit qele nest pas atteynte, et pria bref de garnir le pur quei il suyst

[1] The reports of this term are from the Temple MS., the Lincoln's Inn MS., and the Harleian MS. No. 741.

[2] From T. alone. The case is probably that of which there is a record in the *Placita de Banco*, Hilary, 15 Edw. III., R°. 22. It there appears that an assise was brought by John, son of John Elys, of Staines, against Thomas le Botiler, Joan, daughter of John Elys of Staines, and Katharine, Juliana, and Agnes, her sisters. The Assise found that all those named in the writ had disseised *vi et armis*. The judgment was that John should recover seisin and damages and that Thomas should be taken, but that the four others should not be taken, because under age.

[3] From T. alone.

A.D. 1340–1.

deed. And because the writ of *Fieri facias* was not yet returned, he could not have the writ prayed.

Dower.

(3.) § Dower, where the tenant, by attorney, pleaded that the demandant's husband and the demandant took other land in exchange for the land in respect of which the demand was made; judgment whether an action lies.—And afterwards the tenant made default.—The demandant prayed seisin.

Answer of Sheriff.

(4.) § The answer of a Sheriff to a *Capias* was :—"I "have sent to the bailiff of the liberty of T., who has "answered me that he has taken the person and will "have his body here, &c." But the bailiff did not produce the body. And the Sheriff was not amerced, nor the bailiff of the liberty either, because it was not the bailiff's return.—*Quære.* I think a *Non omittas* will issue.

Waste.

(5.) § Waste.—When the Grand Distress was returnable, which process had not been served, the tenant said

contre son fet. Et pur ceo qe le bref de *Fieri facias* ne fust pas uncore retourne, il nel poet pas aver. A.D. 1340–1.

(3.)[1] § Dower, ou le tenant, par attourne, pleda qe son baroun et la femme qore demande pristrent autre terre en eschange de ceste terre; jugement si accion. —Et pus fist defaute.—La demandante seisine pria. Dower.

(4.)[2] § Respouns dun Vicounte a une *Capias, Mandavi ballivo libertatis de T. qui mihi sic respondit*[4] *quod cepit eum et habebit corpus ejus hic, &c.* Mes il ne lavoit[5] pas. Et[6] le Vicounte ne fust[7] pas amercie, ne le baillif[8] de fraunchise nient, qar ceo nest pas son retourn.—*Quære. Credo quod Non omittas* istra. Respons de Vicounte.[3]

(5.)[9] § Wast.—A la graunde destresse retournable, qe nest pas servy, le tenant dit qil ne duist pas estre Waste.

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[1] From T. alone. The record of this case is probably that which is among the *Placita de Banco*, Hilary, 15 Edw. III., R°. 32. It there appears that an action of Dower was brought by Margaret, late wife of John de Moseleye, against Stephen le Yonge, in respect of land, &c., in Bromyard (Herefordshire). It was pleaded that she and her husband took tenements in Wyteburn (Whitborn) in exchange for those in Bromyard, and that she was now seised of them. The demandant replied that inasmuch as Stephen did not deny the husband's seisin so that he could endow her, but only alleged the exchange "in quo casu eadem Margareta "est perquisitrix," she prayed judgment and seisin. Afterwards Stephen made default and departed in contempt of Court, and judgment was given that Margaret should recover seisin.

[2] From T., L., and Harl. 741.

[3] L., *Responsum Vicecomitis*; Harl., Officer et Retourne, instead of Respons de Vicounte.

[4] L., *respondebat.*

[5] T., lavoit, L., navoit, instead of ne lavoit.

[6] Et is not in L., or Harl.

[7] T. nest, instead of ne fust.

[8] For the words following the word baillif there are substituted in L. and Harl. the following:—*Quære de non omittas.*

[9] From T. alone. The record of this case is among the *Placita de Banco*, Hilary, 15 Ed. III., R°. 3 d. It there appears that the action was brought by John, son of John de Saint John, knight, against Peter de Saint John, clerk. The count or declaration was that John, the father, demised to Peter, for the life of the latter, a messuage, &c. in Wolkenstede (Surrey), and that Peter had committed waste therein, "videlicet prosternendo unam gran- "giam et maeremium inde ven-

A.D. 1340–1. that he ought not to be put to answer, because the writ had not been served.—And, because he had a day by the roll, he was put to answer. — *Pole.* Whereas he supposes [by his count] that we hold for term of life by lease from his father, he himself confirmed our estate, by this deed, to hold for our life, and granted that our heirs and executors should hold for one year beyond; judgment of the writ. — *Thorpe.* The deed proves that he has no higher estate than a term for life; for a term of years, which is a lower estate, cannot vest in him who is previously seised of a freehold, and he cannot make an assignee of that estate; and even though the reversion expectant upon a term [of years] be granted after the death of a tenant of the freehold, that grant does not oust the feoffor from a writ of Waste, nor even, perhaps, if the reversion were granted to another for term of life.— And the COURT was of opinion that the writ is good, whether an estate for a term be saved or not.—*Pole.* As to one ox-stall there is none; ready, &c. And as to the residue there is no waste.— And the COURT caused it to be entered as to the whole that there was no waste committed, because there cannot be any issue on the averment that there is no ox-stall, because, even though the finding might be for the plaintiff, it would be necessary to enquire over as to the waste.

mys de respondre, pur ceo qe le bref nest servy.—Et, pur ceo qil ad jour par roulle, il est mys de respondre. —*Pole.* Ou il suppose qe nous tenoms a terme de vie de lees son pere, il mesme conferma nostre estat par ceo fet, a tenir a nostre vie, et un an outre qe noz heirs et executours le tendrent; jugement du bref.— *Thorpe.* Le fet prove qil nad pluis haut estat qe terme de vie; qar terme des aunz est pluis bas estat ne poet vestier en lui qest devant seisi de frank tenement, et il ne poet de cele estat faire assigne; et mesqe sa reversion de terme soit graunte, apres la decees un tenant de frank-tenement, ceste graunte noste pas le feffour de bref de Wast, ne par cas tout fust reversion graunte a autre pur terme de vie.—Et fust avys a la COURT qe le bref est bon, le quel estat de terme soit saufve ou nient.—*Pole.* Quant a un bovèry, il ny ad nul; prest, &c. Et quant al remenant nul wast.—Et COURT fist entrer a tout Nul wast fait, qar ceo nest pas issu y ni ad pas boverie, qar mesqe trove fust pur le pleintif, uncore covendreit enquerer outre del wast. A.D. 1340–1.

" dendo pretii quadraginta libra-
" rum, et unam boveriam pretii vi-
" ginti librarum." It was pleaded that after the said demise " idem
" Johannes, pater, &c. per quoddam
" scriptum suum voluit et conces-
" sit pro se et heredibus suis et
" suis assignatis quod ipse Petrus
" teneret mesuagium prædictum et
" totam terram vocatam Lefdilond
" ad terminum vitæ ipsius Petri, et,
" post decessum ejusdem Petri, cui-
" cunque ipse Petrus tenementa
" prædicta in vita sua assignare
" seu legare per unum annum post
" ejus mortem tenenda voluerit."
The " scriptum " was produced. It was further pleaded that neither at the time of the demise nor since was there " aliqua boveria in
" mesuagio prædicto in qua ali-
" quod vastum fieri potuit," and as to the " grangia " (or barn) that it was " absque aliqua deterioratione," and so that the defendant had not committed any waste. Issue was joined thereon. There was an award of *Venire*, and the jury were to view the tenements. The jury found waste in the barn, and damages forty shillings, but " nul-
" lum wastum in prædicta boveria." Judgment was given for the plaintiff to recover seisin " de prædicta
" grangia vastata . . . et damna sua
" in triplo, quæ in triplo attingunt
" ad sex libras," and as to the barn Peter was in mercy, but as to the ox-stall (*boveria*) John, son of John, was in mercy for his false claim.

A.D. 1340–1. Diem clausit extremum.

(6.) § *Diem clausit extremum* for the wife of John Thorpe.—It was found that the lady held part of the lands jointly with her husband, who is now dead, for the term of her life. And these lands were delivered to her without taking security from her as to her marriage,[1] because she was not a King's widow by reason of those lands. — And in the Chancery it is the usage, when a woman is endowed of a great inheritance holden of the King, that she shall come in her own person into Court and give security as to her marriage, before she has her dower; and, if the inheritance be small, the Escheator shall take security when he delivers the dower to her.

Note: Diem clausit extremum.

§ On a *Diem clausit extremum* it was found that a woman was joint feoffee of part of the tenements. She had livery without giving security as to marriage, &c.

Per quæ servitia.

(7.) § *Per quæ servitia*, which W. Thorpe brought against a knight and his wife.—They said, by evidence from the Exchequer, that the five fees, in respect of which he demands the attornment, were parcel of the honour of Huntingdon, which came into the King's hand through the forfeiture of R. Bruce, and that the King gave the honour to the Duke of Cornwall his son, &c., and so they held it of the Duke in right of the King.—And upon this the plea was pending for a year, because it touched the King, notwithstanding that they offered always to aver for Thorpe that the defendants held of his cognisor. — And afterwards, because what they stated did not prove the reverse of the averment, and also because nothing would be lost to the King through the averment, even though this should be tried between them, therefore *Rokell*, in accordance with an expression of opinion by the COURT, said that he held of the Duke and not of the cognisor as to parcel; and upon that they were at issue; and as to another parcel, he said

[1] *i.e.*, security that she would not marry without the King's consent. See *Magna Charta* (9 Hen. III.), c. 7, and 17 Ed. II. (*Prærogativa Regis*), c. 4.

(6.)[1] § *Diem clausit extremum* pur la femme Johan Thorpe. — Trove fust qe la dame tient partie des terres joynt ove son baroun, qest ore mort, pur terme de sa vie. Et celes terres lui furent liverez sanz prendre soerte de lui de son mariage, qar ele nest pas veue le Roi par resoun de celes terres.—Et en la Chauncellerie est use qe, quant femme est dowe dune grante heritage [q]est tenu du Roi, ele vendra en propre persone en la Court et fra soerte de son mariage devant qele soit dowe; et, si la chose soit petit, leschetour prendra soerte quant il la livera dower. A.D. 1340–1. Diem clausit extremum.

§ En[2] un[3] *Diem causit extremum* fuit trove qe la femme fuit jointe feffe en partie. Ele avoit lyvere saunz soerte de mariage, &c. Nota: Diem clausit extremum. [Fitz. *Livere*, 31.]

(7.)[4] § *Per quæ servitia*, qe W. Thorpe porta vers un chivaler et sa femme.—Il disoint, par evidence del Eschequer, qe les v. feez, dount il demande lattournement, sount parcele del honour de Huntindone, qe devient en la mayne le Roi par forfaiture de R. Broys, et coment le Roi dona lonour a Duk de Cornewaille, son fitz, &c., et issi tenent il, en dreit le Roi, de Duk.—Et sur ceo le plee pendy un an, pur ceo qil toucha le Roi, *non obstante* qil tendrent touz jours daverer pur Thorpe qil tindrent de son conisour.—Et puis, pur ceo qe ceo qil disoint ne prova pas la reverse del averement, et auxi rien de pert au Roi par laverement, coment qe ceo fust trie entre eux, par quei *Rokel*, par oppinion de COURT, dit qil tient del Duk et noun pas del conisour quant a parcele; et sur ceo sount a issu; et quant a autre parcele il dit qe le conisour tient del baroun vers qi le bref est porte Per quæ servitia.

[1] From T. alone, as far as the point at which the larger type ends.

[2] This report of the case is from L. and Harl. 741.

[3] un is not in Harl.

[4] From T. alone. This appears to be a continuation of No. 103 of Michaelmas Term, 14 Ed. III.

A.D. 1340–1. that the cognisor held of the husband, against whom the writ is brought, for term of life; judgment whether by his acknowledgment, &c.—*Pole.* Ready, &c. that he did not; and as to the residue, the cognisor and W. Thorpe purchased a rent to them and the heirs of W., and their feoffor held of the husband and wife, against whom, &c., judgment. — And he was put to state the parcel with certainty; and he said it was parcel of a certain manor. — *Pole.* That in respect of which we demand attornment is not parcel of that manor; ready, &c.—And the other side said the contrary.

Quare impedit. (8.) § *Quare impedit* against a man and his wife.—At the Attachment the husband appeared, and the wife made default. A Distress was awarded against the wife, and *Idem dies* against the husband. And now at another day the husband came, and the wife did not come. — *Gayneford* prayed a writ to the Bishop. — HILLARY. Although the husband appeared the other day, the wife made default, which was the default of both; wherefore the Distress ought then to have been awarded against both; and so it must still be before judgment may be given on the default; wherefore sue the Grand Distress against both.

Præcipe quod red dat. (9.) § The writ was brought against two persons in common. Each one by himself said that he was tenant. —*Pole.* Heretofore one of them abated the writ because he held jointly with the other; judgment whether to the averment, &c.—*Quære.*

Execution on a statute. (10.) § Execution on a Statute Merchant for four executors.—Two of them were nonsuited; the other two prayed execution by their attorney. And he against whom execution was sued produced a release made by the testator, and thereupon had a writ *quod, vocatis partibus, &c.* And because the attorneys could not answer to the deed, a writ issued to warn the two executors who sued; and they were warned, and did not come; wherefore the execution ceased, and the tenant went quit.

par terme de vie; jugement si par sa conisaunce, &c. —*Pole.* Prest, &c. qe noun; et quant al remenant, le conisour et W. Thorpe purchacerent rente a eux et les heirs W., et lour feffour tient del baroun et sa femme vers quex, &c.; jugement. — Et fust mys de mettre la parcele en certein; et dit qe ceo fust parcele dun certein manoir. — *Pole.* Ceo de quei nous demandoms lattournement nest pas parcele de cel manoir; prest, &c.—*Et alii e contra.* A.D. 1340–1.

(8.)[1] § *Quare impedit* vers un homme et sa femme. —Al attachement le baroun aparust, la femme fist defaute. Un destresse fust agarde vers la femme, et *idem dies* vers le baroun. Et ore a un autre jour le baroun vient, la femme ne vient pas. — *Gayn.* pria bref al Evesqe. — Hill. Coment qe le baroun aparust a lautre jour, la femme fist defaute, quele fust la defalte de lun et lautre; par quei adonqes la destresse duist aver este agarde vers lun et lautre; et issi covient uncore estre fait devant qe jugement se face sur la defaute; par quei suez le graunde destresse vers lun et lautre. Quare impedit.

(9.)[1] § Bref porte vers deux en comune. Chescun a per lui dit qil fust tenant. — *Pole.* Autrefoitz lun deux abatist le bref pur ceo qil tient joynt ove lautre; jugement si al averement.—*Quære.* Præcipe quod reddat.

(10.)[2] § Execucion sur estatut marchant pur iiij. executours.—Deux furent nounsuys; les autres deux prierent execucion par lour attourne. Et celui contre qi execucion fust suy mist avant un relees del testatour, et sur ceo avoit bref *quod, vocatis partibus, &c.* Et pur ceo qe les attournes ne poaint respondre al fet, bref issit de garnir les ij. executours qe suyent; et ils furent garnys, et ne vyndrent pas; par quei execucion cesse, et le tenant quites. Execucion sur estatute.

[1] From T. alone.
[2] From T. alone, as far as the point at which the larger type ends.

A.D. 1340–1. Statute Merchant.

§ Executors, appearing by attorney, had execution on a Statute Merchant. Afterwards the debtor showed a release in Chancery, and had a writ to the Justices *quod, vocatis partibus, &c.* A writ issued to cause the executors to come, because attorneys could not plead in that case.

Debt.

(11.) § Debt, for a woman. — *Pole.* Her husband released by this deed. — *Thorpe.* At the time of the making thereof he was not her husband. — And the other side said the contrary. — And now comes the Inquest.—And note that although there was a date in the deed, which by the form of the plea was, as it were, admitted, still the Court charged the Inquest as to whether he was her husband at the time of the making thereof or not, and not whether he was so at the time of the date.—And it was found that he was not her husband. Therefore it was adjudged that she should recover the debt, and also her damages as laid in her count.—And so note that one will not recover more than one demands in this case.

Dower in Durham.

(12.) § Dower, in Durham. — In this case it was alleged that the demandant was never joined in lawful

§ Executours[1] par attourne avoient execucion de[2] Statut[3] marchand. Puis le dettour moustra relees en Chauncellerie, et avoit bref as Justices *quod, vocatis partibus, &c.* Bref issit de faire venir les executours, qar les attournez ne purront pas pleder en ceo cas. A.D. 1340–1. Statute Marchant.

(11.)[4] § Dette[5] pur une femme.—*Pole.* Son[6] baroun relessa par ceo fet.—*Thorpe.* Al temps de la confeccion il ne fust pas son baroun.—*Et alii e contra.*[7]—E ore vient enquest.—*Et nota* qe coment qe date fust en le fet, quele par manere du plee fust auxi come conu, uncore COURT chargea enquest sil fust son baroun a temps de la confeccion ou noun, pas a temps de la date.—Et trove fust qil ne fust pas son baroun; par quei agarde fust qele recoverast, et ses damages solonc ceo qele counta. — *Et sic nota*, homme ne recovera pluis qil ne demande en ceo cas. Dette. [Fitz. *Feffements et Faits*, 63.]

(12.)[8] § Dower en Duresme, ou fust alege qele ne fust unqes acouple en leal matrimoigne; et ele Dower en Durham.

[1] This report of the case is from L., and Harl. 741.

[2] L., par.

[3] L., Estatut.

[4] From T., L., and Harl. 741.

[5] L., and Harl., En bref de Dette.

[6] L., and Harl., Un T. son.

[7] For the conclusion of the report after the word *contra* the following is substituted in L., and Harl.:—Et lenqueste fust charge del temps de la confeccion et nient de la date du fait, *non obstante* qe la partie ne fist pas protestacion de la date en pledant, &c.

[8] From T. alone. The record of this case appears among the *Placita de Banco*, Hil., 15 Edw. III., R°. 75. The action was brought by Emma, late wife of John de Chilton, against Richard, son of Hugh de Chilton, in respect of tenements in Little Chilton. Issue was joined at Durham as to whether Emma had been lawfully married, she having asserted that she was married at Welles, near Canterbury. The cause was removed into the Court of Common Pleas, because the issue could not be determined in the Court of the Liberty of Durham. The record and process of the Durham Court having been sent into the Court of Common Pleas, Emma said as before. Thereupon the Archbishop of Canterbury was directed to enquire as to the truth and make a return on a day given. "Ad quem diem . . . . prædicta "Emma profert hic literas præ- "dicti Archiepiscopi quæ testantur "quod idem Archiepiscopus, con- "vocatis coram eo omnibus con- "vocandis de jure super contentis "in brevi Regis ei inde directo, "inquiri fecit veritatem, per quam "inquisitionem invenit quod præ- "dicti Johannes de Chilton et "Emma ij Id. Nov. anno Domini

A.D. 1340–1.

matrimony. And she alleged the marriage by the Archbishop of Canterbury. Thereupon, because the matter could not be tried there, a writ issued to the Bishop of Durham to cause the record to come into the Bench. And he did so. And a writ issued to the Archbishop to certify.

Prayer of Aid of the King.

(13.) § Prayer of Aid of the King by one who held for term of life by lease from the Queen and by confirmation of the King. And he produced the deeds.—And he had the Aid.—*Quære*,[1] if execution be awarded to a man, whether his executors shall have execution without garnishment.

Quære.

(14.) § *Quære*, if one recover by *Cessavit* a place where a mill used to be, whether, after the recovery, he can raise a mill there, in a case in which the tenant, before the cesser, removed the mill to another place where it is standing.

Aid-payer, where on the *Pluries summoneas* being returned "late," the *Sequatur suo periculo* was granted.

(15.) § Aid prayer.—The Lady of Clare, as tenant for term of life, prayed aid of one who had the reversion, and it was granted. And on the *Pluries summoneas* being returned "late," the COURT granted to the demandant that the *Sequatur suo periculo* should be entered. The same thing was agreed by the COURT where aid was prayed of one under age, where it was alleged that he was of full age, &c.

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[1] This *Quære* appears to be out of place.

aleggea les esposailles ove Lercevesque de Caunterburie; sur quei, pur ceo qe la chose illoeqes ne poet estre trie, bref issit al Evesqe de Duresme de faire venir le record en Baunk. *Et ita fecit.* Et bref issit al Ercevesqe de certifier. A.D. 1340–1.

(13.)[1] § Eyde prier du Roi par[2] un qe tient du lees la Reigne a terme de vie et[3] par[4] confermement le Roi.[5] Et mist avant les fetz.—*Et habuit.*—*Quære,* si execucion soit agarde a un homme, si ses executours averount execucion sanz garnisement. Eyde priere du Roi.

(14.)[6] § *Quære,* si un homme recovere par *Cessavit* un lieu ou molyn soleit estre, sil purra, apres le recoverir, lever molyn la, ou le tenant, avant, le cesser le remua en autre lieu ou il est esteant. Quære.

(15.)[7] § Eide prier.—La dame de Clare pria, come tenant a terme de vie, dun a qi la reversion, qe fust graunte. Et al *Summoneas sicut pluries* retourne *tarde,* COURT graunta al demandant qe *Sequatur suo periculo* fust entre. Mesme la chose est acorde par COURT ou eide est prie dun deinz age, ou alegge est qil est de pleine age, &c.[7] Eyde prier ou, al *Summoneas sicut pluries* retourne *tarde, Sequatur suo periculo* fuyt grante. [Fitz. *Sequatur sub suo periculo,* 4.]

" Millesimo trecentesimo vicesimo " octavo, in ostio ecclesiæ beatæ " Mariæ Magdalenæ de Welles, " Cantuariensi diocesi, matrimo- " nium adinvicem per verba mu- " tuum consensum exprimentia " de præsenti, bannis prius ut " moris est in ea parte editis, " legitime contraxerunt, et illud " tunc ibidem publice in facie ec- " clesiæ solemnizari fecerunt, quod " constare facit Justiciariis hic " per literas suas prædictas." Afterwards the cause was removed " coram ipso Rege in Cancellaria " sua."

[1] From T., L., and Harl. 741.

[2] L., and Harl., Eide fut grante del Roy a, instead of Eyde prier du Roi par.

[3] et is not in T.

[4] par is not in Harl.

[5] For the words following the word Roi, L. and Harl. substitute &c.

[6] From T. alone.

[7] From T. alone. There is substituted in L. and Harl. 741, the following:—" Si eide soit prie den- " faunt [et] dit est qil est de pleyn " age, ou plee demurra par noun " age, *Sequatur suo periculo* serra " grante." This agrees, in the main, with the Abridgment of Fitz.

A.D. 1340–1. Account.

(16.) § One who was outlawed upon a writ of Account had a charter of pardon, and sued a writ to warn him who was plaintiff in the Original.—The Sheriff returned that he had nothing whereby he could be warned.—But nevertheless the plaintiff came and counted by agreement between them.—*Quære* what would be done if the outlaw who sued the garnishment would not have agreed to this course.

Scire facias, where the fine was caused to come at the suit of Odo, to whom a remainder in fee tail was limited. And afterwards John, the son of Odo, sued

(17.) § *Scire facias* for John, son of Odo, in the King's Bench, upon a fine by which a remainder was limited to Odo. And it came by writ of *Mittimus* at the suit of Odo.—*Pole.* This fine has come here without warrant; for the *Mittimus* supposes that it is at the suit of Odo; and the suit by *Scire facias* supposes this to be the suit of John, son of Odo. — Scot. Then it would be well to sue a writ that we should proceed "notwithstanding "the variance," &c. — And on the morrow a writ issued for them to proceed. — *Pole.* Still *Scire facias* issuing upon a record which comes here without warrant is not given.—*Thorpe.* If Odo caused the record to come here,

A.D. 1340-1. Accompte. [Fitz. *Respond*, 2.]

(16.)[1] § Celui qe fust[2] utlage[3] en bref dacompt avoit chartre de pardoun, et suyst bref de garnir celui qe fust pleintif en loriginal. — Le Vicounte retourna qil navoit rien ou destre garny. — Mes[4] ne-purquant il[5] vient et conta par assent entre eux.— *Quære*, si le utlage qe suyst le garnissement ne voleit aver assentu a ceste chose, *quid fieret*.[6]

Scire facias,[8] ou la fyn fuyt fait vener a la suyt Eude, a qi un remeindre de fee taille fuyt taille. Et Johan le fitz Eude siwy ceste *Scire facias*, qe fuyt chalange qar cesti bref sup-

(17.)[7] § *Scire facias* pur Johan,[9] le fitz Eude,[10] en[11] Bank le Roi, hors dun fyne par[12] quele un remeindre fust taille a Eude.[10] Et[13] vient par bref de *mittimus* a la suyte Eude.[10]—*Pole.* Ceste fyne est venu icy sans garrant ; qar le *mittimus* suppose qe cest a la suyte Eude ;[10] et la suyte par[14] *Scire facias* suppose ceste chose estre la[15] suyte Johan[9] fitz Eude.[10] —Scot.[16] Donqes serreit il bien de suyr bref qe nous alassoms avant *non obstante variatione*, &c.—Et lendemene[17] bref vint daler avant.[18] — *Pole.* Uncore le *Scire facias* issu hors de recorde qe vient ycy saunz garrant nest pas done.[19]—*Thorpe.* Si Eude[10] fist venir

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[1] From T., L., and Harl. 741.

[2] L. and Harl., Homme, instead of Celui qe fust.

[3] L., utalage.

[4] Mes is not in L.

[5] Harl., R. ; L., *R. Thorpe.*

[6] Harl., quel fiereit, instead of *quid fieret.*

[7] From T., L., and Harl. 741, as far as the point at which the larger type ends. The case seems to be that of which there is a record among the *Placita coram Rege*, Hil., 15 Edw. III., R°. 54. It there appears that a *Scire facias* on a fine was brought by John, son of Odo, against one John de Acton. The fine was levied in the year 16 Edw. I., between one John de Acton the younger, plaintiff, and Margaret de Acton, deforciant, and was *sur done, grant, et render*, John granting back to Margaret for her life, with reversion to John in tail, remainder to his brother Odo in tail, and remainder to the right heirs of Margaret.

[8] The marginal abstract, after the word *facias*, is in T. alone.

[9] L., J.

[10] L., E.

[11] T., suy en.

[12] par is not in L.

[13] Et is not in Harl.

[14] par is not in L.

[15] la is not in L.

[16] L., Scott.

[17] Harl., lendimaine.

[18] avant is not in Harl.

[19] T., bon.

A.D. 1340–1. this *Scire facias*, to which exception was taken because this writ supposed the fine to be sued at the suit of John, and the *Mittimus* was at the suit of Odo, and so the fine came without warrant. Thereupon the plaintiff sued a writ to the Justices that, notwithstanding the variance, &c. Wherefore the writ was adjudged good. Afterwards it was said that the plaintiff's father, to

and died before execution, his son John would have execution; now one cannot try whether the record came by any other than Odo. — Afterwards the writ was adjudged good. — Thereupon the tenant alleged non-tenure of parcel; judgment of the writ. — SCOT. If you alleged non-tenure of the whole, he would have execution; therefore you must answer as to the residue. And HERLE would not abate a writ of this nature for non-tenure; and we have spoken to all the JUSTICES on this point, and we are agreed that this does not abate the writ;[1] therefore, by judgment, answer as to the residue. —*Pole.* He sues execution upon a fine by which the land was limited to his father, to hold to him and the heirs of his body, &c.; we tell you that his father was seised, and so the entail was executed by the fine; judgment of the writ.— *Thorpe.* And we demand judgment, since the seisin does not oust us from this suit, and we pray execution. — *Thorpe.* Suppose land be rendered by fine to me for term of life, and after my death to Stouford and the heirs of his body, and suppose the fine was not ever executed in me, and Stouford be subsequently seised by execution of the fine, if his issue cannot afterwards have execution, they are without action, for a Formedon does not serve them, because the tenant for life was not seised.—*Blaik.* It does; the issue will have a good writ in the Descender, supposing the gift to have been immediate to their father.—This was denied. — *Stouford.* It has always been settled law that

[1] According to the record issue was joined on the question of non-tenure of parcel; but there follows a long blank space on the roll, after which come the pleadings as to other points.

le record icy, et morust avant execucion, Johan,[1] son fitz, avereit execucion; ore ne poet homme trier qe le record vient par autre qe par Eude. — Puis[2] le bref est agarde bon, par quei le tenant aleggea noun tenue de parcelle; jugement du bref.—SCOT.[3] Si vous alegge-astes[4] nountenue[5] de tout, il avereit execucion; par quei il covient respondre du remenant. Et HERLE ne voleit abatre tiel[6] bref pur nountenue;[5] et nous avoms parle a touz les JUSTICES de ceo point, et sumes acordes qe ceo nabate pas le bref; par quei, par[7] agard, responez del remenant. — *Pole.* Il suyst execucion hors dune fyne par quele la terre[8] fust taille a soun pere, a[9] lui et les heirs de son[10] corps, &c.; nous vous dioms qe son pere fust seisi, et issi la taille execut par la fine; jugement du bref.—*Thorpe.* Et[11] nous jugement, del houre qe[12] la seisine ne nous ouste pas de ceste suyte, et prioms execucion.[13]— *Thorpe.* Si terre soit rendu par fyne a moy a terme de vie, apres ma mort a Stouf. et les heirs de son corps, si la fine ne fust unqes execut en moy, et Stouf. puis soit seisi par execucion de la fyne, si son issu ne poet autrefoitz aver execucion, il est saunz accion, qar forme doun ne lui seert pas, pur ceo qe le tenant a terme de vie ne fust pas seisi. — *Blayk.* Si fait, il avera bon bref en descender, le doun immediate estre fait a son pere.—*Quod negatur.*—*Stouf.* Touz jours ad

A.D. 1340-1, pose la fyn estre siwy a la suyte Johan, et le *Mittimus* a la suyte Eude, et issint sanz garrant; sur quei il siwit bref a les Justices *quod, non obstante variatione*, &c., par quei le bref est agarde bon. Puys fut dit qe son pere, a qi, &c., fuyt seisi, &c., issi la fyn execut; jugement de bref; a quei dit fu qe sa seisine ne toud pas cest suyt; par quei, &c. Puys apres il prist son chalenge

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[1] L., J.
[2] L., Et puis.
[3] L., SCOTT.
[4] Harl., allegassez.
[5] Harl., nountenour.
[6] L., cesti; Harl., cel.
[7] par is not in L.
[8] Harl., lautre, instead of la terre.
[9] L., et a.
[10] L., lour.
[11] Et is not in Harl.
[12] L., qil.
[13] For the rest of the report (after the word execucion), there are substituted in L. the words *Et adjournantur*, and in Harl. the word *Adjournantur*. In L. there appears, under the head of the Trinity Term next following, a comparatively short report of the same case, or one resembling it towards the end.

A.D. 1340–1. whom, &c., was seised, &c., and so the fine was executed; judgment of the writ. To this it was said that his seisin did not take away this suit; wherefore, &c. Then afterwards the tenant took his exception that the plaintiff's father was seised; judgment of the writ which supposes that the tenements were to remain to him, whereas the supposition should have been that they were to descend to him. And because this plea may be taken in different senses—either in abatement of this writ as being taken in the remainder,

it is a good answer in a *Scire facias* that the fine was executed, if the party would not answer otherwise *gratis*. — Afterwards, in Easter term, *Pole* said:—His father entered and was seised; judgment of the writ; for in that case he will have a writ in the Descender, though a writ in the Remainder is abatable.—*Thorpe*. The issue is, as it were, purchaser; for if under age he would be admitted; judgment whether you can on that ground abate the writ, for, where an entail in remainder vests by fine, the words are that the tenements shall remain to such an one and the heirs of his body, so that the heirs are as much purchasers as the ancestor is; and the issue, by judgment, has had execution in a case where his father was seised. — SCOT. The party then waived his exception *gratis*. And, if you were seised, would not your entry be by your father? And you would be in wardship, because your ancestor was seised and you were under age. And it is more reasonable that you should be put to delay, where the entail was executed, than that he should be ousted from voucher and other advantages. — *Thorpe*. The entail and the action are admitted, and he can bar here as well upon this writ as upon any other, if he have matter so to do; and it is unreasonable that the deed of our ancestor, who had only by entail, should be prejudicial to us.—Afterwards, in Trinity term, *Stouford* said:—Our plea is always to the writ, which purports that the land ought to remain to him as heir of his father, by the fine, whereas he has admitted that his father was seised; for we understand that through his admission we shall have the same advantage as if we had been at issue, and by the verdict the finding had been against him.—*Blaik*. What writ should he have?—*Stouford*. Formedon in the Descender. — *Blaik*. Then will you say nothing else to this *Scire facias?* And one has seen the writ maintained in this Court, in a like case. — *Stouford*. Never by judgment, where the

este ley use pur bon respons en *Scire facias* et la fine fust execut, si partie ne voleit respondre de gree. — *Postea, termino Paschæ, Pole.* Son pere entra et fust seisi; jugement du bref; qar en cel cas il avera bref en le descender, ou en le remeindre il est abatable. — *Thorpe.* Lissu est come purchaceour, qar deinz age il serreit resceu; jugement si par taunt puissez le bref abatre; qar, quant taille vest en remeindre par fyne, les paroles sont qe les tenementz a un tiel et les heirs de son corps remeindrent, issi qe les heirs auxi avant come launcestre sont purchaceours, et lissu par agard ad ew execucion ou son pere fuyt seisi. — Scot. Partie weyva son chalange de gree. Et, si vous fuissez seisi, ne serreit vostre entre par vostre pere? Et vous serrez en garde, pur ceo qe vostre auncestre fust seisi et vous fuissez deinz age. Et il [y ad] pluis de resoun qe vous soiez mys a delay, ou la taille fust execut, qil soit ouste de voucher et autre avantage.—*Thorpe.* La taille et laccion est conu, et il poet barrer issi auxi bien en ceo bref come en nul autre, sil eit matere; et il nest pas resoun qe le fet nostre auncestre, qe navoit forqe par taille, nous soit prejudiciel.—*Postea, termino Trinitatis, Stouf.* Nostre plee est touz jours a bref, qe voet qe la terre deit remeindre a lui come heir son pere, par la fyne, la ou il ad conu qe son pere fust seisi; qar nous entendoms de sa conisance aver mesme lavantage come si nous ussoms este a issu, et sur verdist il ust este trove contre lui. —*Blayk.* Quel bref avereit il?—*Stouf.* Forme de doun en descender.—*Blaik.* Donqes ne volez autre chose dire a ceo *Scire facias?* Et homme ad vew le bref meintenu ceinz en cele cas. — *Stouf.* Unqes par

A.D. 1340–1. qe son pere fuyt seisi; jugement de bref qe suppose qe a ly remeindreit, ou il serreit descendreit. Et pur ceo qe cel plee poet estre pris a divers entent, ou de abatre ceo bref pris en le remeindre, ou pur ceo qe *Scire facias* ne gist pas pur ceo qe son pere fuyt seisi, quel est al accion, par quei il fut chace de prendre son plee en certein.[1] [Fitz. *Briefe* 681; *Scire facias*, 14.]

[1] The remainder of this marginal note is much worn and illegible.

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entail had been executed. — *Thorpe.* Of an annuity recovered, and of a way, one may have execution more than once, and yet one can here have another recovery. —SCARDEBURGH. If land be rendered in fee simple, only one execution shall be had; why more than one of land entailed? — *Thorpe.* Because the issue in tail commences higher than the seisin of his ancestor, and always takes an action from the entail. — SCOT. You take your exception in a way which may now be regarded from different points of view; one is that the *Scire facias* does not lie because his father was seised and so the entail was executed, for which reason a *Scire facias* cannot serve, and from that point of view your plea is to the action; another is that his father was seised according to the form [of the gift], and the *Scire facias* purports that the land is to remain, whereas it ought to purport that the land is to descend, and from that point of view your plea is only to abate the writ.—*Pole.* Whether you can regard it in one way or the other, if by the manner of admission the writ is false, you will abate it. — SCOT. Take your plea with certainty, or we will take it in the strongest sense, and that is to the action, and then you will have no other answer afterwards. — *Blaik* would have taken the exception that the writ should be in the Descender and not in the Remainder; and it was said that he should not be admitted to this, because his first plea went generally to oust the party from execution. Therefore they took another plea to the action, because they did not dare to abide judgment on the first plea; and he alleged exchanges, partly in demesne and partly in reversion descended from his father who was party to the exchanges. — *Thorpe.* As to what was alleged to have descended to him in demesne, and of which it was alleged that he was seised, he never had anything; ready, &c.; and as to that in reversion, we have nothing, but we disclaim in the reversion; judgment whether

or to the effect that a *Scire facias* does not lie because the plaintiff's father was seised, which plea is to the action,— therefore he was compelled to take his plea with certainty.

agarde, ou la taille fust execut.—*Thorpe.* Dannuyte recoveri, et de chemyn, homme poet aver execucion pluis qun foitz, et si poet il aver autre recoverir.— SCHARD. Si terre soit rendu en fee simple, homme navera qune execucion; pur quei pluis de terre taille? — *Thorpe.* Pur ceo qe lissu en taille comence pluis haut qe la seisine son auncestre, et prent touz jours accion de la taille. — SCOT. Vous pernez vostre excepcion en la manere qore poet estre entendu a divers regarde; un est qe *Scire facias* ne gist pas pur ceo qe son pere fust seisi et issi la taille execut, par quei *Scire facias* ne poet servir, et issi est vostre plee al accion; un autre est pur ceo qe son pere fust seisi par la forme, qe ceo *Scire facias* ne voet qe la terre deit remeindre ou il duist descendre, et issi forsqe al abatement du bref.—*Pole.* Le quel qe vous poez veer par lun ou lautre qe par la manere conue le bref soit faux, vous labatres.—SCOT. Pernez vostre plee en certein, ou nous le prendroms a pluis fort, et cest al accion, et donqes averez vous nul autre respons puis. —*Blayk* voleit aver pris lexcepcion qe le bref serreit en descendre et noun pas en remeindre; et fust parle qil ne serreit resceu, pur ceo qe son primer plee fust generalment douster partie dexecucion; par quei il pristrent autre plee al accion, pur ceo qil noserent demurer en jugement sur le primer plee, et alegge eschanges[1] partie en demene en reversion descendu par son pere, qe fust partie a leschanges.[2]— *Thorpe.* Quant a ceo qe fust allegge qe lui duist aver descendu en demene, dount il duist estre seisi, il navoit unqes rien; prest, &c.; et quant a ceo en reversion, nous navoms rien, mes desclamoms en la reversion; juge- A.D. 1340–1.

[1] T., estranges.

[2] T., les estranges.

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thereby you can bar us. — *Stouford.* We have by a certain cause fixed the reversion in him, which cause he does not deny; judgment whether by his disclaimer, &c. —But the COURT will take no account of the descent of the reversion, unless the party will accept it.—They were adjourned.[1]

Transcript of a Fine.

§ The transcript of a fine was caused to come into the King's Bench, upon which fine one John, son and heir of Odo, sued a *Scire facias* against the tenant, who came and said by *Blaik*:— This record is caused to come at the suit of one Odo, and not at your suit, wherefore we have no need to answer to this writ which is sued by you. — *Thorpe.* The person at whose suit the transcript came into this Court was our ancestor, and he is dead, and through his death the suing of execution is given to us by law. — Nevertheless the party who was tenant was not put to answer to his suit. — Therefore it will be necessary for him to sue to cause another transcript to come.

Scire facias.

§ In a *Scire facias* upon a fine brought in the King's Bench against John de Acton he alleged non-tenure of parcel.—*Thorpe.* Answer as to the residue.—*Pole.* The exception abates the whole writ, and, if it appear to the Court, &c., we will say sufficient as to the residue. — *Thorpe.* You shall not be admitted to another answer as to the residue, if you abide judgment, for as to the residue you do not plead anything either to the writ or to the action. Therefore, for default of an answer, we pray execution as to the residue.

Error.

(18.) § Error, sued in the King's Bench, in a case in which Geoffrey de Staunton recovered, as appears in Michaelmas Term above, against John de Staunton and Amy his wife, and in which the wife was admitted. And the record was sued into the Chancery by reason of error,

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[1] In the end, according to the record, a discontinuance of process was alleged by the defendant, and not denied by the plaintiff. Therefore nothing further was to be done.

ment si par taunt nous puissez barrer. — *Stouf.* Nous avoms attache la reversion en lui par certeine cause, quele cause il ne dedit pas ; jugement si par son desclamance, &c.—Mes COURT ne chargera pas reversion descendu, si partie ne la voleit accepter.—*Adjournantur.* A.D. 1340–1.

§ Le[1] transcript du fin[2] fut fait[3] vener en Bank le Roi, hors de quel fyn un Johan,[4] fitz et heir Ede, suyst un *Scire facias* vers le tenant, qe vynt et dit par *Blaik* : — Ceo record est fait vener a la suyte un Ede et ne my a vostre suyt, par quei a ceo bref qest suy par vous navoms mester a respondre. — *Thorpe.* Celuy a qi suyt le transcript veynt[5] cieyns fut nostre auncestre, et il est mort, et par sa mort la suyte del execucion est done a nous par ley.—*Tamen* la partie tenant ne fuit pas mys a respondre a sa suyte ; par quei il luy covendra seure de faire vener autre transcript, &c. Transcript de fyn. [Fitz. *Scire facias*, 13.]

§ En[6] un *Scire facias* hors dune fyn porte en Bank le Roi vers Johan[7] de Actone il alleggea nountenue de parcel.— *Thorpe.* Responez del remenant.—*Pole.* Lexcepcion abate tot le bref, et, si la Court voie, &c., nous dirroms assetz de remenant.—*Thorpe.* Vous navendrez pas[8] a autre respons del remenant, si vous demoergez,[9] qar del remenant vous ne pledez rien al bref ne al accion ; par quei, pur[10] defaute de respons,[11] nous prioms execucion del remenant. Scire facias.

(18.)[12] § Errour, qe fust suy en Bank le Roi, ou Geffray de Stantone recoveri, *ut patet supra Michaelis*,[13] vers Johan de Stantone et Amy, sa femme, ou la femme fust resceu. Et le record fust suy en Chaun- Errur.

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[1] This report, or abridgment of a portion of the case, is from L. and Harl. 741.

[2] The words du fin are not in L.

[3] Harl., fest.

[4] L., J.

[5] Harl., vint.

[6] This report, or abridgment of another portion of the case is also found in L., and Harl. 741.

[7] L., J.

[8] L., mye.

[9] Harl., demurez.

[10] pur is not in L.

[11] The words de respons are not in L.

[12] From T. alone, as far as the point at which the larger type ends. There is in the MS. a long marginal abstract of this case, but much rubbed and partly illegible. This is a report of the proceedings in Error in the case reported as No. 15 in Mich., 13 Edw. III. For a history of the case, and the records relating to it, see the Introduction to the volume Y. B., 13–14 Edw. III., xxxvi–xlv.

[13] T., *Trinitatis.*

A.D. 1340–1. and was sent into the King's Bench by reason of error, at the suit of John and his wife. And the record was sewed to the writ by virtue of which it came into the Chancery.—Geoffrey de Staunton sued another writ, and caused the record to come into the King's Bench in order to have execution.—Geoffrey de Staunton was warned to hear the errors, and he took exception to the writ for that there were two records, and one could not know upon which it issued.—And note that the writ by which the record was sued to allege the errors was of later date by two days than the other writ by which the record came to have execution. And it was said that the last was only a transcript, because the Justices could not record twice; but because they both agreed, it appeared to the COURT that it was all one record. And the point was touched upon, that one could not know by the date of the writs which record was first made, but this was not done with any spirit.—*R. Thorpe* assigned the errors:—the first was that when the wife, having been admitted, vouched her husband, and shewed cause (viz., for that her husband acknowledged by fine the tenements to be the right of Thomas Cranthorne as those which Thomas had of his gift, and Thomas rendered back to her husband and her, and so she vouched her husband as assignee of Thomas), thereupon the demandant was admitted to aver that Thomas never had anything, though he did not deny the sole seisin of the husband before the fine, nor the joint tenancy of the husband and his wife, which could only be understood to be by the fine. The second error:—We offered to aver that Thomas was seised, and they forejudged us of the averment because they said that we refused it before, whereas in the record you will find that we were always ready; for the words of the record are "and if it appear to the Court," &c. The third error:—when it appeared to the Court that the averment should be refused, they awarded seisin, whereas they

cellerie par cause derrour, et mande en Bank le Roi par cause derrour, a la suyte J. et sa femme. Et le record fust cousu al bref par quel il vient en la Chauncellerie.—Geffray de Stantone suyst un autre bref et fist venir le record en Bank le Roi pur aver execucion.—G. Stantone fust garny doier les errours, et chalenga le bref de ceo qil y sont deux records et homme ne poet saver de quel il est issu.—*Et nota* qe le bref par quel le record est suy daleger les errours est de puisne date qe nest lautre bref par quel le record vient daver execucion par ij. jours. Et fust dit qe le dareine nest fors transcript, pur ceo qe les Justices ne poaint ij. foitz recorder; mes pur ceo qil acorderent bien sembloit a COURT qe cest tout un record. Et fust touche qe homme ne poet saver par la date de brefs quel record fust primes fait, mes nient vyvant, &c.—*R. Thorpe* assigna les errours:—le primer ou la femme resceu voucha son baroun, et moustra cause pur ceo qe son baroun conisast par fyne les tenementz estre le dreit Thomas Cranthorne[1] come ceo qil avoit de son doun, et Thomas rendy arere a son baroun et lui, et issi come assigne Thomas voucha son baroun, la fust il resceu daverer qe Thomas navoit unqes rien, ou il ne dedit pas la soul seisine le baroun avant la fyne, ne la tenance le baroun et sa femme joynt, qe ne poet estre entendu forsqe par la fyne. Le secunde errour:—nous tendimes daverer [qe] Thomas fust seisi, et il nous forjugerent del averement pur ceo qil disoint qe nous le refusames devant, ou en le record vous troverez qe nous fumes tout temps prest; qar le record voet "*et si videatur Curiæ, &c.* Le terce:—quant il lour sembloit qe laverement fust refuse, il agarderent A.D. 1340–1.

[1] T., Crornthorn.

A.D. 1340-1.

ought to have put us to give another answer. The fourth error:—when it appeared to the Court that the averment was admissible, we were ready to accept it, and they did not permit us, though this was only upon a dilatory plea, but they awarded seisin; in that respect they erred.—*Pole.* The judgment was given with the assent of Parliament; wherefore in a lower Court you can not escape from or redress error.—This objection was not allowed, because the judgment was not given in Parliament.—*W. Thorpe* answered to the error first assigned, and said:—When the wife was compelled to shew cause for her voucher, the cause was traversable, wherefore the judgment as to that was good. And as to the protestation which was entered on the record, the protestation was contrary to law; wherefore that cannot be a cause of error. And as to the third error,—that seisin was awarded whereas he ought to have been put to give another answer over—this is not law, except in the case of the Statute where the voucher is counterpleaded by averment which is given by Statute,[1] but this counterplea was at common law. And as to the fourth error, the judgment was good, for he took his delays and did abide judgment whether the averment was admissible or not.—Afterwards in Trinity term in the 16th year, *Pole* rehearsed, and said:—The writ issued without warrant, for the first record which came to you was sued by the demandant. to have execution, and when the other came afterwards, to assign error, it was only a transcript and not a record which could warrant *Scire facias.*—*R. Thorpe.* The two writs by which the two records came were returnable at one day; and it cannot be known, although one be of earlier date than the other, by virtue of which of the writs the Justice made the record, and therefore the Court here has entered only one record by force of

[1] 3 Edw. I. (Westm. 1), c. 40.

seisine, la ou il nous duissent aver mys a autre respouns. Le quart:—quant sembloit a la Court qe laverement fust resceivable, nous fumes prest de resceivere, et il nous suffrirent pas, ou ceo ne fust forsqe sur un dilatorie, mes agarderent seisine; en tant errerent.—*Pole.* Le jugement fust done par assent de Parlement; par quei en place pluis bas vous ne poez errour estourtre ne redresser.—*Non allocatur*, pur ceo qe le jugement ne fust pas rendu en Parlement.—*W. Thorpe* respondi al errour primes assigne, et dit:—Quant la femme fust chace de moustrer cause de son voucher, la cause fust traversable, par quei le jugement en ceo fust bon. Et quant al protestacion qe fust entre en record, la protestacion fust contre ley; par quei ceo ne poet estre cause derrour. Et quant al terce errour, de ceo qe seisine fust agarde ou il duist aver este bote outre a autre respons, ceo nest pas ley, sil ne fust en cas destatut qe voucher fust contreplede par averement qest done par Statut, mes ceo contreplee fust a la comune ley. Et quant al quart, le jugement fust bon. qar il prist ses delays et demura en jugement si laverement fust resceivable ou noun.—*Postea termino Trinitatis anno xvj. Pole* rehercea qe le bref issit sanz garrant, qar le primer record qe vous[1] vient fust suy par le demandant daver execucion, et quant lautre vient apres pur assigner errour, qe ne fust forsqe transcript et noun pas record qe purreit garrantir *Scire facias.* — *R. Thorpe.*[2] Lun et lautre par queles les ij. recordes vindrent sont retournable a un jour; et homme ne poet saver, tout soit lun deigne date qe lautre, par quel des brefs la Justice fist le record, et pur ceo Court icy

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[1] T., vous vous.

[2] T., *Pole.* But *Pole* was for the defendant in error.

A.D. 1340-1. the two writs; for the two agree, and this writ of *Scire facias* is in agreement with the record which is sent here by reason of error; wherefore it is to be understood that the *Scire facias* is warranted by that record. And suppose that there was no record but that which came for the purpose of having execution, that would be a warrant for this *Scire facias;* and this I prove to you; for if the demandant sued execution, the Court, although without the party, would delay awarding execution, and would not particularly remark the record for that cause of arrest.—*W. Thorpe.* But the judgment will not be reversed without a writ from the Chancery to give warrant to the Court in such case.—*Stouford* said he had often seen a *Scire facias ad audiendum errores* issue against the party, although the record did not come by reason of error, and without any other warrant from the Chancery.— *W. Thorpe.* I do not think so; and (always saving this point for us) as to the errors, we tell you first that whereas they say that the sole seisin of the husband before the marriage was the cause of the voucher, that could not be the cause of voucher without the fine, which fine he who uses it must always maintain as good; and by the averment that Thomas, who was supposed to have rendered, had nothing, the fine, which was the principal cause of the voucher, was avoided, for by the intermediate possession, which was supposed in Thomas by the fine, she made the supposed conveyance of the tenancy to herself; wherefore it is sufficient to destroy that.—PARNING. Your writ made her tenant, which can only be understood as by the fine, since you do not show any other title in her; and if she had not been named, your writ would have abated by the fine; then to aver that he who rendered had nothing was not an issue.—*W. Thorpe.* It is not necessary for me to show how a tenant against whom I bring a writ has come into possession; but even if my writ had been abated by the fine because the wife was not named

ad entre par force de les deux brefs forsqe un record; qar touz deux sacordent, et ceo bref de *Scire facias* est acordant al record qest mande icy par cause derrour; par quei homme entent qe cest garranti de cel record. Et jeo pose qil y avoit nul record forsqe cele qe vient par cause daver execucion, ceo serreit garrant a ceo *Scire facias;* ou ceo vous proefs; qar si le demandant suyst execucion, Court, tout saunz partie, par cause derrour restreit dagarder execucion, et merche reine le record pur cele cause darest.— *W. Thorpe.* Mes le jugement ne serra pas reverse saunz bref de la Chauncellerie qe durreit garrant a la Court en tiel cas. — *Stou.* Ad vew sovent *Scire facias* doir errour issir vers partie, tout ne vient pas le record par cause derrour, et saunz autre garrant de la Chauncellerie.—*W. Thorpe.* Ceo ne croy jeo mye; et, saufve a nous touz jours ceo cy, quant a les errours, vous dioms primes qe, la ou il dient qe la soul seisine le baroun avant les esposailles fust cause de voucher, ceo ne poait estre cause de voucher saunz la fyne, quele fyne celui qe la use covient touz jours pur meyntenir pur bone; et par laverement qe Thomas navoit rien et dust aver rendu si fust la fyne voide, quele fust la principale cause del voucher, qar par cele mene possession, qe fust suppose en Thomas par la fyne, conveya ele la tenance en lui; par quei a destruir cel suffist.—PARN. Vostre bref la fist tenant, qe ne poet estre entendu forsqe par la fine, del houre qe vous ne moustrez autre title en lui; et, si ele nust este nome, vostre bref ust abatu par la fyne; donqes daverer qe celui qe rendist navoit rien ne fust pas issu.—*Thorpe.* Jeo ne dey pas moustrer coment tenant soit avenuz vers qi jeo porte bref; mes tout ust este mon bref abatu par la fyne par nient nomer de la femme, a un autre bref jeo A.D. 1340-1.

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in the writ, yet upon another writ I should have been admitted, if the tenants had vouched, to aver that the vouchee, who was supposed to have rendered by the fine, never had anything, &c.—*Stouford* said, as to the other error, that when the Court ousted him from the voucher and awarded seisin it ousted him, without answer, from his land.—PARNING. I never heard that, although the party tendered a peremptory averment and the tenant demanded judgment whether the averment was admissible, the Court gave judgment without first asking him whether he would plead anything else.—And then there was touched the point that the judgment according to the new Statute[1] was agreed to in Parliament, and that it was there commanded to the Justices to make such a judgment, wherefore, if they had not given such a judgment as they gave, it would have been a clear error.—*Stouford.* Judgment was given only in the Common Bench, and that which was done there can be redressed here, and what was agreed to in Council in the absence of the party can not be binding. — And note that SCARDEBURGH said (and PARNING, *Thorpe,* and many others agreed to it) that, if voucher be counterpleaded, by Statute,[2] by averment, and the tenant will not answer over *gratis,* but is adjourned on his abiding judgment whether the averment be admissible or not, then, if the averment be admissible he will lose the land.—PARNING. If a woman were disseised by a man and she released to him with warranty, or, *e contra,* if the man were ousted by the woman and had warranty, and either of them were counterpleaded, he would have warranty from the other; then it is unreasonable that by marriage either of them should lose that advantage.—*Thorpe.* They will lose it; for after marriage neither shall have voucher of the other without a cause, which cause may be traversed; but before marriage the voucher would be good if it

[1] 14 Edw. III., c. 5.

[2] 3 Edw. I. (Westm. I.), c. 40.

usse este resceu, si les tenantz ussent vouche, daverer qe le vouche qe fust suppose qe duist aver rendu par la fyne navoit unqes rien, &c.—*Stou.* parla a lautre errour, qe quant Court lousta del voucher et agarda seisine, il lui oustreit saunz respouns de sa terre.—PARN. Ne oy jeo pas, mesqe partie tendist averement peremptorie et le tenant demanda jugement issi fust resceivable, qe Court rendist jugement saunz primes demander de lui sil voleit autre chose dire.—Et puis fust touche qe le jugement, solonc novel estatut, fust assentu en parlement, et illoeqes comande as Justices de faire tiel jugement, par quei, sil nussent fait tiel jugement come il ferrent, ceo ust este errour apert.—*Stouf.* Jugement ne fust pas rendu forsqe en Comune Bank, et ceo qe illoeqes fust fait poet icy estre redresse, et ceo qe fust avys en conseil en absence de partie ne poet pas charger.—*Et nota* qe SCHARD. dit, *ad quod* PARN. *Thorpe* et plusours consenserent, qe, si voucher soit contreplede, par statut, par averement, et tenant de gree ne voleit dire outre, mes est ajourne sur sa demure si laverement soit resceivable ou noun, si laverement soit resceivable il perdra terre.—PARN. Si la femme soit disseisi par un homme et ele relest a lui ove garrantie, *vel, e contra*, si lomme soit ouste par la femme et eit garrantie, si ascun deux fust contreplede, il avereit garrantie dautre; donqes par les esposailles nest pas resoun qe nul deux perde cel avantage.—*Thorpe.* Si fra; qar apres esposaille nul avera voucher dautre sanz cause quel est traversable; mes devant esposaille le voucher A.D. 1340-1.

A.D. 1340–1.

were not counterpleaded by Statute;[1] and it is no mischief in law to oust warranty by release, for by release no estate accrues.—PARNING. Possibility of feoffment, though without actual feoffment, gives voucher, and this is proved by the Statute[1] which gives the averment that the vouchee, &c., never had anything, &c. —*Thorpe.* Sole seisin of the husband before the coverture never gave a cause for the wife to vouch him; and, if an assignee vouch, it is a good answer that he never had anything by the assignment.—*Quære post.*

Error.

§ John de Staunton and Amy his wife caused a record to come out of the Common Bench into the King's Bench for the assignment of errors, where the record of the writ that Geoffrey de Staunton brought against the said John and Amy showed how Amy was admitted to defend her right and vouched John, her husband, and showed, as the cause of her voucher, that John, her husband, was sometime solely seised and enfeoffed Thomas de Cranthorn, between which Thomas and the said John and Amy a fine was levied, whereby John [acknowledged] the tenements, &c. to be the right of Thomas as those which Thomas had of his gift, for which acknowledgment Thomas granted and rendered to John and to Amy, &c., and so, as assignee of Thomas, she vouched John her husband. Geoffrey offered to aver that Thomas never had anything, which averment was counterpleaded by virtue of the fine, and thereupon the parties were adjourned. Afterwards by decision of Parliament a writ was sent into the Common Bench to proceed to judgment for the demandant, and therefore judgment was given for him on the ground of the refusal of the averment.—Afterwards in the King's Bench it was alleged that the Court below had erred in giving judgment for the demandant when in fact the tenant did not refuse the averment except conditionally, that is, by saying that in case it should appear to the Court that the averment was admissible, he was ready to say sufficient. Another error assigned was that they had given judgment that the demandant should recover, whereas on counterplea of voucher the judgment should be that the tenant answer over and be ousted from his voucher. Another error assigned was in that, whereas an averment is not

[1] 3 Edw. I. (Westm. 1), c. 40.

serreit bon sil ne fust contreplede par statut; et ceo nest pas meschief en ley douster garrantie par relees, qar par relees estat nest pas encru.—PARN. Possiblete de feffement, tout sanz feffement, doune voucher, et ceo prove statut qe doune laverement qe le vouche, &c., navoit unqes rien, &c.—*Thorpe.* Soul seisine de baroun avant coverture dona unqes cause de voucher de lui par sa femme; et, si assigne vouche, cest bon respouns qil navoit rien de son assignement.—*Quære postea.*[1] A.D. 1340-1.

§ Johan[2] de Stauntone et Amye sa femme firent vener un recorde hors de Comune Bank en Bank le Roi par assigner errours, ou le recorde du bref qe Geffray de Stauntone porta vers les ditz Johan et Amie ou Amie fut a defendre soun dreit et voucha J., soun baroun, et moustra cause de soun voucher et qe J., soun baroun, fu en ascun temps soul seisi et enfeffa Thomas de Cranthorn,[3] entre quel Thomas et les ditz Johan et Amye fin se leva, ou J. les tenementz, &c. estre le dreit Thomas com &c. de soun doun, pur quel reconisance T. granta et rendi a J. et a Amie, &c., issint, com assigne Thomas, vouche ele J. soun baroun. Geffray[4] tendi daverer qe Thomas navoit unqes rien, quel averement fuit contreplede par la fine, et sur ceo les parties ajournes. Pus par avis del Parlement[5] fu mande en Bank de aler a jugement pur le demandant, par quei jugement fu rendu pur ly pur le refuser del averement.—Pus en Bank le Roi fu allege qil arrerent en tant com il donerent jugement pur le demandant la ou le tenant ne refusa pas laverement fors sour condicion en cas qe la Court veist laverement fu resceivable prest a dire assetz. Un autre errour en tant com il donerent jugement qe le demandant recoverast, la ou sour contreple de voucher le jugement serra qe le tenant respondit outre, et qil fuit ouste de soun voucher. Un autre errour fu de ceo qe la ou averement Error.

[1] The end of the proceedings in Error was, according to the record (*Placita Coram Rege*, Hil., 15 Edw. III., R°. 61), the following:—"Postea prædicti Johannes de "Stauntone et Amia solemniter "vocati non veniunt. Et, super "hoc, prædictus Galfridus petit "executionem, &c., et ei concedi-"tur, &c."

[2] This report of the case is from Harl. 741 alone, in which MS. it is placed under the head of Michaelmas Term, 14 Edw. III.

[3] Harl., Cronthorn.

[4] Harl., cui feit.

[5] Harl., pleintif.

A.D. 1340-1. admissible in such a case in opposition to a fine produced to maintain the voucher, they gave judgment on the ground of the refusal of the averment.—*Thorpe.* We are strangers to the fine, and shall not therefore be ousted from the averment. — *Stouford.* Whether Thomas was seised or not, his seisin was not the cause of the voucher, but the sole seisin of the husband was ; but as to the cause of the warranty, that would come from the seisin of Thomas and his render, but the cause which gives the warranty shall never be tried between the demandant and the tenant. — *Thorpe.* It shall be in a case in which the cause of the warranty has to be shown in the voucher, as, for instance, in case you vouch as assignee, the demandant shall say that you have nothing by the assignment.—*R. Thorpe.* You supposed the wife to be tenant by your writ, which tenancy we took in a certain manner, that is to say, by the fine, whereas, if you had omitted the wife from the writ, she would have abated your writ without this that you would have had any answer as to this point; no more shall you have one in this case. Besides, the fine is good and executory. Even though Thomas never was seised, still the fine is good. — *Thorpe.* Even though the fine might have abated the writ for the non-naming of the wife, that proves nothing as to this matter, for the writ will also abate by reason of a charter, at common law. And we pray that the judgment be affirmed.

Formedon. (19.) § Formedon against an Abbot.—*Pole.* The Abbot is parson of the church of St. Kevern, and holds the tenements as parcel of the church [1] of St. Kevern, and he is not named parson ; judgment of the writ, for he would not have aid, &c. unless he were named parson.—*Gayneford.* He does not hold the tenements as parson ; [2] ready, &c.—*Pole.* You shall not be admitted to that, for your ancestor, by fine, rendered the same tenements to our predecessor to hold, as the right of his church of St. Kevern, to him and his successors ; judgment whether in opposition to the fine, &c.[3]

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[1] *i.e.*, according to the record, holds the tenements in frank-almoign as the free alms of that church annexed thereto.

[2] The replication, according to the record, was that the Abbot did not hold the tenements as the free alms of the church.

[3] According to the record the rejoinder was that a fine was levied by Thomas de Pridias and Sibilla his wife (the supposed donee), whereby they acknowledged the tenements to be the right of the Abbot of Beaulieu and his church of St. Kevern, and the Abbot

nest pas resceivable en tiel cas contre fine mis avant pur meintener voucher qil donereint jugement pur le refuser de laverer.—*Thorpe.* A la fin sumes nous estrange, par quei par tant ne serroms par ouste de laverer.—*Stouf.* Le quel Thomas fu seisi ou noun ne fu pas la cause de la voucher, mes la soul seisine le baroun; mes la cause de garrantie ceo vendreit de la seisine Thomas, et de soun rendre, mes la cause qe doune la garrantie ne serra jammes trie entre le demandant et le tenant. — *Thorpe.* Si serra en cas ou la cause de la garrantie deit estre moustre en le voucher, come, en cas si vous vochez com assigne, le demandant dirra qe vous navez rien de soun assignement.—*R. Thorpe.* Vous supposastes la feme tenant par vostre bref, quel tenance nous priames par certein manere, saver par la fin, ou, si vous ussez entrelesse la feme en vostre bref, ele ust abatu vostre bref, saunz ceo qe vous ussez eu respons a ceo; nient plus naverez en ceo cas. Estre ceo, la fin est boun et executorie. Tut ne fuit Thomas unqes seisi, unqore la fin boun.—*Thorpe.* Mesqe la fin abatist le bref pur nient nomer, ceo nest par prove a cest matere, qar auxi abatera par chartre et a la comune ley. Et prioms qe le jugement soit afferme. A.D. 1340–1.

(19.)[1] §. Forme de doun vers un Abbe.—*Pole.* Labbe est persone del eglise de Seynt Caveran,[2] et tient les tenementz come parcele del eglise de Seynt Caveran,[2] nient nome persone; jugement du bref, qar il navera eide, &c., sil ne fust nome persone.—*Gayn.* Il ne lez[3] tient pas come persone; prest, &c.—*Pole.* A ceo ne serrez resceu, qar vostre auncestre, par fyne, rendist mesmes les tenementz a nostre[4] predecessour a tenir, come le dreit de sa eglise de Seynt Caveran,[2] a lui et ses successours; jugement si contre la fyne, &c. Forme de doun.

[1] From T., L., and Harl. 741, but corrected by the record *Placita de Banco,* Hilary, 15 Edw. III., R°. 104. It there appears that an action of Formedon in the Descender was brought by one Martinus (without any surname mentioned) against Peter, Abbot of Beaulieu, in respect of tenements "in Tregonan juxta villam de "Sancto Kierano" (Cornwall).

[2] T., L., and Harl., E., instead of Seynt Caveran. The words of the record are Sancti Caverani.

[3] T., ne; L., and Harl., lez, instead of ne lez.

[4] Harl., vostre.

A.D. 1340-1. Wardship.

(20.) § Henry, Earl of Lancaster, brought a writ of Wardship against Eleanor, Countess of Ormond, and demanded the wardship of James, son and heir of James le Botiler, and counted that James, the father of the infant, held of him certain tenements by knight-service and died in his homage. — *Blaik.* Our Lord the King, by this deed, delivered the infant to this Eleanor, who is the infant's mother, to keep and sustain until of full age, taking, year by year, from such a Sheriff, 110 marks. (And the deed purported that the infant was in the wardship of the King.) And we have nothing except at the King's will; judgment whether this writ lies against us.[1] — *Fencotes.* Your exception is insufficient when you say that you have now nothing in the wardship except &c., without answering as to the tenancy on the day on which the writ was brought. — *Blaik.* Even though we had the wardship on the day on which the writ was brought, yet, if the King have seized it since, our seisin is defeated. — *Thorpe.* We will aver that you were tenant of the wardship on the day on which the writ was brought. Besides, you have a day by *prece partium;* wherefore you shall not be admitted to allege non-

granted them back to Thomas and Sibilla for her life, to hold of the Abbot and his successors and their church of St. Kevern, the reversion being to the Abbot and the said church. The Abbot concluded by praying judgment whether the demandant could be admitted to say that the tenements were not the free alms of the said church. After adjournments the demandant failed to appear, and judgment was given for the Abbot.

[1] The plea, according to the record was (without admitting that the infant's father held of the Earl of Lancaster) that the father held of the King certain lands *in capite* by knight-service, that after his death the King seized the wardship of the heir, and delivered the heir to the Countess of Ormond to keep and support until of full age, "vel "quousque idem dominus Rex "aliud inde duxerit ordinandum." Afterwards the King granted by Letters Patent (recited in the plea), 110 marks *per annum* to the Countess until the full age of the infant "vel quousque, &c." She therefore prayed judgment whether, inasmuch as she had nothing in the wardship except the sustenance and nurture of the heir, the Earl ought to be answered as to this writ.

(20.)[1] § Henre, Count de Lancastre, porta bref de gard vers Elienore, Countesse de Ormonde, et demanda la garde de James, fitz et heir James le Botiler, et counta qe J., pere lenfaunt, tint de ly certeinz tenementz en chivalrie et morust en soun homage.—*Blaik.* Nostre Seignur le Roi, par ceo fet, bailla lenfant a ceste Elianore, qest miere lenfant, a garder et nuer tant qe a soun age, pernant, de an en an, de tiel Vicounte, cx. marcz. (Et le fet voleit qil fu en la gard le Roi.) Et nous navoms rien fors a la volunte le Roi; jugement si ceo bref vers nous igise.—*Fencot.* Vostre excepcion nest pas plein a dire qe vous navez rien ore en la gard fors &c., saunz respoundre a la tenance jour du bref porte. — *Blaik.* Tut avioms la garde jour du bref, si le Roi lait seisi pus, nostre seisine est defet. — *Thorpe.* Nous voloms averer qe vous futes tenant de la garde jour du bref porte. Estre ceo, vous avez jour par *prece partium;* par quei dallegger nountenue navendrez pas sil ne fuit par

A.D. 1340–1. Garde.

[1] From Harl. 741 alone, as far as the point at which the larger type ends. The report is there placed under the head of Mich. Term, 14 Edw. III. It has been compared with the record *Placita de Banco*, Hil., 15 Edw. III., R°. 380.

A.D. 1340–1. tenure except through some special circumstance which has occurred since.—*Ham.* You plead one plea in fact [and another in law] inasmuch as you allege the *prece partium;* wherefore hold to one.[1]—*Thorpe.* If you will not take issue on this plea which lies in fact, then that shall be held as not denied by you; then both fall in law.[2]—*R. Thorpe.* The words of a *prece partium* on a writ of Wardship are, "between such an one demandant and such an one," without the use of the word "tenant" or "deforciant." Besides, the writ lies against any occupant, as does a *Quare impedit* against any disturber; therefore *prece partium* cannot affirm tenancy in her person.

Wardship. § Wardship, against the Countess of Ormond.—*Derworthy.* We tell you that the King committed the nurture of the infant to us to hold at his pleasure, (and then *Derworthy* recited that by his patent, which is here, as above) and granted us 100*l.* for the sustenance of the infant; so the King is seised; judgment whether the writ lies against us.—*Thorpe.* That is tantamount to saying that she is not tenant to that intent, although the exception refers to the day of the purchase of the writ. Besides, we tell you that she has taken a *prece partium* with us, affirming the tenancy; judgment whether to the exception of non-tenure, &c.—HILLARY. As to the first point, although the King has become possessed of the wardship, pending the writ, this abates the writ. As to the *prece partium*, that does not affirm the tenancy on this writ, as it

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[1] The words attributed to "Ham" represent the rejoinder as given in the record. It was that the Earl's pleading was double—firstly, in saying that the Countess did not allege non-tenure on the day of the purchase of the writ, which matter lies in fact and is to be proved by verdict of the jury—and, secondly, in saying that she ought not to be admitted to disclaim after *prece partium*, which matter lies in law and in the discretion of the Justices. Letters Patent (dated previously to the purchase of the writ) by which the King granted a sum in addition to the 110 marks *per annum* for the support of the infant were here produced.

[2] The words attributed to *Thorpe* appear to represent the surrejoinder in the record. It was that, as the Countess had already affirmed the writ to be good by taking a day *prece partium*, she could not be admitted to quash it by her allegations. Judgment was prayed for the Earl. There were several adjournments, but no judgment appears on the roll.

fet especial avenu pus.—*Ham.* Vous pledez une plee en feit en tant com vous allegez le *prece partium;* par quei tenez a lun.—*Thorpe.* Si vous ne volez pas prendre issue sour le plee qe chiet en feit, donqes serra tenu a nient dedit de vous; donqes chesent ambedeux en ley.—*R. Thorpe.* Les paroles de *prece partium* en bref de garde sount *inter talem petentem et talem,* saunz dire *tenentem* ou *deforciantem.* Estre ceo, le bref gist vers chescun ocupour, com feit *Quare impedit* vers chescun desturbour; par quei *prece partium* ne put pas affermer tenant en sa persone. A.D. 1340–1.

§ Garde,[1] vers la Contasse Dormond.—*Derworth.* Nous vous dioms qe le Roi bailla la nurture[2] lenfant a nous tanqe lui plest, et puis recita par sa patente, qe cy est, *ut supra,* et nous graunta c. *li.* pur la sustenance de lenfaunt; issi est le Roi seisi; jugement si le bref vers nous gise.—*Thorpe.* Taunt amont qele nest pas tenant a cele entente, coment referre lexcepcion al jour del bref purchace. Ovesqe ceo, vous dioms qele ad pris *prece partium* ovesqe nous, affermant la tenance; jugement si al excepcion de nountenue, &c.—Hill. Quant al primer point, mesqe le Roi soit avenuz, pendant le bref, a la garde, ceo abate le bref. Quant ad *prece partium,* ceo nafferme la Garde.

[1] This report of the case is from T. alone.

[2] T., turture.

A.D. 1340–1. does on a *Præcipe quod reddat*, for on that writ the continuance purports to be between such an one demandant and such an one tenant, and on this writ the continuance purports to be between such an one plaintiff and such an one, without more; and so it is on a *Quare impedit.*—And afterwards he produced another patent, made before the purchase of the writ, to the effect that the King, granted to the Countess the wardship during his pleasure; judgment of the writ.

Assise of Novel Disseisin. (21.) § Novel Disseisin.—The tenant pleaded in bar an acknowledgment of the right made by B., the plaintiff's ancestor, by fine levied to one, A., as that which A. had of his gift, alleging that the tenant had A.'s estate; judgment whether assise, &c.—And note that, by the judgment of the COURT, this was a good bar.—*Thorpe.* We say that our father gave the tenements to that B., to hold to him and the heirs of his body, &c., saving the reversion, &c.; and we tell you that B. continued that estate, and died seised without heirs of his body; wherefore we entered as upon our reversion, and were seised until we were disseised by you.—*Pole.* To aver the tenancy is in avoidance of the fine to which your ancestor was party, and supposes that he divested himself.—*Thorpe.* By my seisin I am ousted from a Formedon in the Reverter; besides, if you were to sue execution against me upon the fine, and I were tenant, I should disturb you; for the same reason I shall have the assise in respect of the possession which I had.

Quare deforciat. (22.) § *Quare deforciat*[1] was brought against a man and his wife.—The tenant was by judgment ousted from view, because it was understood that he was the same person that recovered. And some said that the writ lies against no other.—*Pole.* We tell you that

[1] The writ of this nature was, in later times, commonly known as *Quod ei deforciat.*

tenance en ceo bref, come fait en *Præcipe quod reddat*, qar la voet[1] la continuance entre un tiel *petentem* et un tiel *tenentem*, et ceo bref voet la continuance entre un tiel *querentem* et un tiel, sanz pluis; et auxi est en un *Quare impedit.*—Et puis moustre avant un autre patente de la date devant le bref purchace qe le Roi lui granta la garde a sa volunte; jugement du bref. A.D. 1340–1.

(21.)[2] § Novele disseisine.—Le tenant pleda en barre par reconisance de dreit de B., son auncestre, par fyne leve a un A., come ceo qe A. ad de son doun, qi estat il ad; jugement si assise.—*Et nota* qe cest bon barre par jugement de COURT.—*Thorpe.* Nous dioms qe nostre pere dona les tenementz a celui B., a lui et les heirs de son corps, &c., savant la reversion, &c.; et vous dioms qe B. cel estat continua, et morust seisi sanz heir de son corps; par quei nous entrames come en nostre reversion, et seisi fumes tanqe par vous disseisi.—*Pole.* Daverer la tenance est en voidance de la fyne a quel vostre auncestre fust partie, et suppose sa demyse.—*Thorpe.* Par ma seisine jeo suy ouste de fourme doun en reverti; ovesqe ceo qe vous suyssez execucion vers moy hors de la fyne et jeo fuisse tenant, jeo vous desturberoy; par meisme la resoun de la possessioun quele javoy javera assise. Assisa Novæ Disseisinæ. [14 Li. Ass., 18.]

(22.)[3] § *Quare deforciat* porte vers un homme et sa femme.—Le tenant par agarde est ouste de la vewe, pur ceo qil est entendu qil est mesme la persone qe recoveri. Et ascuns disoint qe le bref gist vers nul autre.—*Pole.* Nous vous dioms qil traverserent nostre Quare deforciat.

[1] T., poet.

[2] From T. alone; but see above, No. 107, of Michaelmas Term, 14 Edw. III. There does not seem to be any doubt that this is the case which appears as 14 Li. Ass., 18. There is, however, both in L. and in Harl. 741, a transcript of a record to which has been placed in the margin of Harl. the note "14 Ass. 18." This record does not agree with the Li. Ass. either in respect of the names of the parties as given in the Michaelmas report of the case, or in respect of some of the other details, as stated in both reports, and was perhaps transcribed in mistake.

[3] From T. alone.

A.D. 1340–1. they traversed our action on the first writ, and upon this the Inquest was charged, and they departed in contempt of the Court, whereupon judgment was given; judgment of the writ.—And, because this was to the action, he did not dare to abide judgment, but said that he would maintain his right in the first writ. And he did so; and upon that they were at issue.

Dower. (23.) § Dower.—*Pole.* We brought a writ against A., who departed in contempt of Court, whereupon we recovered, and the estate of your husband was mesne between the action and the recovery. And *Pole* tendered the averment that the demandant in the previous writ had right to recover; judgment.—*Thorpe* traversed the action on the first writ. And upon that they were at issue.

Attachment on Prohibition. (24.) The King sued Attachment on Prohibition against Robert Balle for that the latter had prosecuted in Court Christian à plea in respect of the lay fee of the Prior of Longleat. And it was counted, on behalf of the King, that

accion en le primer bref, et sur ceo enquest charge, et il departirent en despit de la Court, sur quei jugement se fist; jugement du bref.—Et, pur ceo qe cest al accion, il nosa demorer, mes dit qil voleit meintenir son dreit en le primer bref.—*Et ita fecit;* et sur ceo sount a issu. A.D. 1340-1.

(23.)[1] § Dower.—*Pole.* Nous portames bref vers un A. qe departi en despit de Court, sur quei nous recoverimes, et lestat vostre baroun fust mene entre laccion et le recoverir; et tendy daverer qil avoit dreit a recoverir; jugement.—*Thorpe* traversa laccion sur le primer bref. Et sur ceo sont a issu. Dowere.

(24.)[2] Le Roi sueyt attachement sour la prohibicion[3] vers Robert Balle de ceo qil avoit suy en Court Christiene de ley[4] fee le Priour de Langlete. Et fuit Attachement sour Prohibicion.

[1] From T. alone, but compared with the record *Placita de Banco*, Hil., 15 Edw. III., R°. 254 d. It there appears that the action was brought by Agnes, late wife of William de Batheleye, against William, son of John, son of Henry de Suthmuskam. The plea was that the tenant previously brought a writ of *Sur cui in vita* against William, son of William de Batheleye and Katharine his wife, and Robert, son of William de Batheleye, in respect of the tenements whereof dower was prayed, into which the three had not entry but after the demise which Henry de Suthmuskam (formerly husband of Agnes, daughter of Matilda Pacy, grandmother of the aforesaid William, son of John, whose heir he is), made to Hugh de Codyngton; that upon this writ of *Sur cui in vita* William, son of John, recovered his seisin upon default of the three tenants named therein; and that the estate which William de Batheleye, the demandant's husband, had was mesne between the demise to Hugh and the judgment, and was altogether annulled by the judgment. In her replication the demandant Agnes prayed that William, son of John, the tenant "ostendat jus secundum formam "prioris brevis." In his rejoinder William, the tenant, said that Agnes, the grandmother, was seised, that the right descended from her to John, her son and heir, and from John to William, son of John, who was seised through the recovery aforesaid. In her sur-rejoinder the demandant traversed the demise to Hugh supposed in the writ of *Sur cui in vita*, and issue was joined thereon.

[2] From L., and Harl. 741, as far as the point at which the larger type ends, but corrected by the record *Placita de Banco*, Hilary, 15 Edw. III., R°. 124.

[3] The words sour la prohibicion are not in L.

[4] Harl., la.

A.D. 1340-1. Robert had prosecuted a plea in respect [of the services] of divers chanters which he demanded against the Prior, for certain tenements in such a vill, to perform chantings in his chapel of Hull Deverel.—*Pole.* The King's count proves that the plea was not prosecuted in respect of the Prior's lay fee, for the chantings, according to that which is supposed by the count, shall be the fee and the right of Robert and not the lay fee of the Prior, and so this count is not warranted by the writ; judgment of the count.—*Thorpe.* We cannot have any other count on the matter, and so your plea is to the action. Besides, the charge which is demanded in respect of Robert's lay fee is accounted in law a demand of the Prior's lay fee, just as much as if the soil were in demand.—*Pole.* Robert has not prosecuted any plea in respect of the Prior's lay fee, as you have counted; ready, &c.—And the other side said the contrary, &c.

Attachment. § Attachment on Prohibition, which a Prior brought against B., for that he prosecuted a plea in Court Christian in respect of the lay fee of the Prior; and the plaintiff showed by his count how he sued for a certain rent to be taken from the freehold of the Prior for the support of four chaplains.—*Pole.* He has counted that he prosecuted the plea in respect of the lay fee of the Prior; but a rent issuing from the freehold of the Prior can not be a lay fee. —This exception was not allowed.—*Pole.* He did not prosecute any plea contrary to the Prohibition; ready, &c.—And the other side said the contrary.

counte, pur le Roi, qil avoit suy plee de divers chaunteries [quels il demanda vers le Prior en certeinz tenementz en tiel ville a faire les chauntiers][1] en sa chapelle de H.[2]—*Pole.* Le counte le Roi prove qe le plee ne fuit pas suy de lay fee le Prior, qar lez chanteries,[3] a ceo qest suppose par le counte, serra le fee et le dreit Robert et nient[4] le lay fee le Prior, issint ceo counte nyent garranti du bref; jugement del counte.—*Thorpe.* Nous ne poms autre counte aver sour la matere, issint vostre plee a laccion. Estre ceo,[5] la charge qest demande de lay fee Robert est acounte[6] en ley un demande de soun lay[7] fee si avant com si le[8] soil fust en demande.—*Pole.* Il nad suy nul plee de lay[7] fee le Prior, com vous avez counte; [prest, &c.—*Et*][9] *alii e contra, &c.* A.D. 1340–1.

§ Attachement[10] sur prohibicion, qun Priour porta vers B., de ceo qil suyst plee en Court Christiene del lay fee le Priour; et mostra par cont coment il suyst de certein rente et prendre del frank tenement le Priour pur la sustenance de iiij. chapleyns.—*Pole.* Il ad conte qil suyst del lay fee le Priour; mes rente issuant del frank tenement le Priour ne poet estre en lay fee.—*Non allocatur.*—*Pole.* Il suyst nul plee contre la prohibicion, &c.—*Et alii e contra.* Attachement.

[1] The words between brackets are not in L.

[2] L. and Harl., son manoir de T., instead of sa chapelle de H. It was stated in the count or declaration, according to the record, that Robert Balle had cited the Prior to appear before John de Kyrkeby, Official of the Bishop of Salisbury, "ad respondendum ipsi "Roberto de laico feodo, videlicet "de servitiis inveniendi quatuor "capellanos divina de die in diem "celebraturos in capella prædicti "Roberti de Hulledeverel," the services being for certain messuages, &c., which Robert alleged that the Prior thereby held of him, and that Robert prosecuted his plea in Court Christian after Prohibition, until the Prior was excommunicated. Robert traversed the alleged prosecution of the plea. Issue was joined thereon.

[3] Harl., chantiers.

[4] nient is not in L.

[5] ceo is not in Harl.

[6] L., qe est tenant, instead of est acounte.

[7] L., ley.

[8] L., cele, instead of com si le.

[9] The words between brackets are not in L.

[10] This report of the case is from T. alone.

A.D. 1340–1. Execution on a Statute.

(25.) § Execution was sued on a Statute Merchant made in London, so that the party was taken and lodged in Newgate.—*Thorpe* showed indentures in defeasance of the Statute, and a writ from the Chancery *quod, vocatis partibus, &c.*, and prayed a writ to cause the body to come and also a writ to warn the party to show cause why he sued contrary to his own deed.—HILLARY. The Eyre is proclaimed at the Tower of London, and we have a writ to adjourn all the London pleas thither; therefore we can do nothing; but take you your suit in the Eyre.—*Thorpe.* When he comes before you, you can adjourn him.—HILLARY. We will do nothing.—And it was said that the Sheriff ought to return his writs in the Eyre, by force of the Proclamation, though they may be returnable in the Bench. Therefore *Thorpe* sued in the Eyre, and there had his writ.

Dower.

(26.) § On a writ of Dower brought against a man and his wife, guardians of the land and of the heir of one T., the husband made default. The wife came and prayed to be admitted.—*Pole.* Your estate is but a chattel, the ownership of which belongs to the husband, and the Statute[1] does not give the admission in any case except where the freehold is to be lost; wherefore, &c.—*R. Thorpe.* Since you have named the wife in your writ, as tenant of your demand, it seems that she shall be admitted.—*Fencotes.* The admission is given in cases in which the right of the wife is to be lost, but in

[1] 13 Edw. I. (Westm. 2), c. 3.

A.D. 1340–1. Execucion hors dune estatut.[2]

(25.)[1] § Execucion fust[3] suy hors dun Statut Marchaunt fait[4] en Loundres, issi qe la partie fust pris et livere a Neuwegate.[5]—*Thorpe* moustra enden-tours en defesaunce del estatut, et bref de la Chaun-cellerie *quod, vocatis partibus, &c.*, et pria bref de faire venir le corps et auxi de garnir la partie par quei il suy contre soun fet demene.[6]—HILL. Leir[7] est crie a la Tour de Loundres, et nous avoms bref dajourner[8] touz les pleez de Loundres illoeqes; par quei nous ne pooms rien faire; mes pernez[9] vostre suyte en leir.—*Thorpe.* Quant il vindreit devant vous, vous le poez ajourner.[10]—HILL. Nous voloms rien faire.—Et fust dit qe le Vicounte duist[11] retourner ses brefs en Eir, par force de la crie, tout soient ils retournables en Bank. Par quei *Thorpe* suy en leir *et ibi habuit*[12] *breve.*

Dowere. [Fitz. *Resceit*, 122.]

(26.)[13] § En un[14] bref de douwer porte vers un homme et sa femme, gardayns de la terre et del heir un T., le baroun fist defaute. La feme vynt et pria destre resceu.—*Pole.* Vostre estat nest qe[15] chatel, de quel la proprete est al baroun, et lestatut ne doune la resceit[16] fors la ou franctenement est a perdre; par quei, &c.—*R. Thorpe.* De puis qe vous avez nome la femme en vostre bref, com tenant de vostre demande, il semble qel[17] serra resceu.—*Fenc.* La resceit[16] est done la ou le dreit la femme est a

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[1] From T., L., and Harl. 741.

[2] The marginal note in L. is "Statut Marchant," in Harl., "Office."

[3] fust is in T. alone.

[4] Harl., feist.

[5] Harl., Neugate.

[6] demene is in L. alone.

[7] L., Lier.

[8] Harl., de attourner.

[9] Harl., provez.

[10] Harl., attourner.

[11] Harl., dut.

[12] L., *fuit.*

[13] From L., and Harl. 741, as far as the point at which the larger type ends.

[14] un is not in Harl.

[15] Harl., pas.

[16] L., rescette.

[17] L., qil.

A.D. 1340-1. this case the wardship and the profits of it belong to the husband to give and to sell at his will, without this that the wife shall have any recovery after his death.—HILLARY. If the demandant's husband died seised, then shall the woman who now prays to be admitted be charged with damages, and therefore there will be mischief to her if she be not admitted.—And because the demandant would not admit her *gratis*, a day was given. —*Thorpe.* We pray that the wife who prays to be admitted may constitute an attorney.—HILLARY. She is not a party before she is admitted, and we have not given any day to the wife; but let her come on another day if she will. But consider whether you can constitute an attorney by writ.

Dower. § Dower against R. Ufford and the Lady Latymer, his wife, as against guardians.—The husband made default; the wife prayed to be admitted.—*Blaik.* Their tenancy is only of a chattel which the husband can rightfully give without the consent of his wife, and the writ would be good even if the lady were not named, because voucher does not lie in this case; wherefore we pray seisin.—HILLARY. The writ would be bad if she were not named; and your writ makes her to be tenant; and she may defend freehold, and be admitted.—And a day was given.—And the lady would have constituted an attorney by bill; and she was not allowed to do so. And it was thereupon said by the COURT that she should go to the Chancery.—And afterwards she was ousted from the admission in Trinity term next following.

Wardship. (27.) § Wardship of the body and lands.—*Pole*, as to the body, alleged non-tenure, and, as to the lands, that

perdre, mes en ceo cas la garde et les profitz de ceo sount al baroun a doner et vendre a sa volunte, sanz ceo qe la femme avera nul recoverer apres sa[1] mort. —HILL. Si le baroun de[2] la demandante morust[3] seisi, adonqes serra la femme qe ore prie charge des damages, par quei meschef serra a luy si ele[4] ne serra resceu.—Et, pur ceo qe la demandante ne la[5] voleit resceivere de gre, jour fut done.—*Thorpe.* Nous prioms qe la feme qe prie destre resceu[6] puise fere[7] attorne.—HILLAR. Ele nest pas partie avant[8] qele soit resceu, et nous navoms nul jour done a la feme; mes viegne a lautre jour si el[9] voudra. Mes veiez si vous puissez[10] faire attourne par bref. A.D. 1340–1.

§ Dower,[11] vers R. Ufford et la dame Latymer, sa femme, come vers gardeinz.—Le baroun fist defaute; la femme pria destre resceu.—*Blaik.* Lour tenance est forsque de chastel quel le baroun poet doner par dreit saunz le gree la femme, et le bref serreit bon tout ne fust la dame nome, pur ceo qe voucher ne gist nient en le cas; par quei nous prioms seisine.—HILL. Le bref serreit malveys si ele ne fust nome; et vostre bref la fait tenant; et ele defendra frank tenement, et ele soit resceu.—Et ad jour.—Et la dame voleit par bille aver fait attourne; *et non potuit.* Et dit la fust par COURT qele alast a la Chauncellerie.—Et puis fust ouste de la resceite *termino Trinitatis proximo sequente.* Dowere.

(27.)[12] § Garde de corps et terres.—*Pole,* qant al corps, allegea nountenue, et, quant a lez[13] terres, laun- Garde.

[1] Harl., la.

[2] de is not in Harl.

[3] L., more.

[4] L., sele, instead of si ele.

[5] la is not in L.

[6] The words destre resceu are not in L.

[7] L., fare.

[8] avant is not in Harl.

[9] L., sele, instead of si el.

[10] puissez is not in L.

[11] This report of the case is from T. alone.

[12] From T., L., and Harl. 741, but corrected by the record, *Placita de Banco,* Hilary, 15 Edw. III., R°. 296. It there appears that the action was brought by the Abbot of Croyland against Ranulph de Veer, in respect of the wardship of the land and the heir of Edmund de Veer of Great Addington (Northamptonshire).

[13] lez is in L. alone.

A.D. 1340–1. the ancestor did not hold of the plaintiff by knight-service.—And notwithstanding that the last issue would be to the action in its entirety, yet by judgment issue was taken on both, on account of the mischief that would ensue; for otherwise the defendant would be charged with the marriage of the infant and with damages, when possibly he had nothing.[1]—And it was said that he might well allege joint-tenancy as to the body, and traverse the action as to the land.—*Quære*, if it be found that the ancestor did not hold of the plaintiff by knight-service, whether they would afterwards enquire of the non-tenure [of the body].—*Quære* whether he could have denied the tenancy of this land, and have pleaded priority of feoffment of other land as to the wardship of the body.

Note. (28.) § Note that, when one prays a resummons out of a liberty, he shall show a cause, and if the cause be not sufficient he shall not have it.

Mesne. (29.) § On a writ of Mesne the defendant said that the plaintiff held of him by more services than those of which the plaintiff had counted, and pleaded further that the plaintiff had not been distrained through his default. —And the other side said the contrary.—The plaintiff prayed judgment in respect of the principal, inasmuch as the defendant had admitted the acquittal of services to be due, and had judgment that he should recover the acquittal; and the issue, as above, was received in respect of the damages.

Note: Mesne. § Note that on a writ of Mesne the defendant made protestation that the plaintiff held by several services, and said that the plaintiff was not distrained through his default; and it was adjudged that the plaintiff should recover the acquittal of services, and have an inquest for the damages. A similar case above in Michaelmas term in the 14th year.[2]

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[1] According to the record issue was joined on the plaintiff's replication that, on the day of the purchase of the writ, the defendant was tenant of the wardship of the body, and that the ancestor did hold by knight-service.

[2] M. 14, E. III., No. 66.

cestre ne tint pas del pleintif par service de chivaler. —Et,[1] *non obstante* qe le dereine issue[2] serreit al accion a tout, par agard lissue est pris sur lun et lautre, pur le meschief; qar autrement il[3] serreit charge del mariage lenfant et de damages, la ou il nad rien par cas.—Et[4] fust dit qil alleggera bien jointenance du corps, et de la terre traversera laccion. —*Quære* si trove soit qil ne[5] tint pas de lui par service de chivaler, sil volent apres enquere de la nountenue.—*Quære* sil poet aver dedit la tenance de ceste terre, et plede priorite[6] dautre terre pur la garde du corps.[7] A.D. 1340–1.

(28.)[8] *Nota,* qant homme prie resomons hors de fraunchise, il mostrera[9] cause, et si la cause ne soit pas sufficeant il nel avera pas.[10] Nota.

(29.)[12] § En un[13] bref de Meen le defendant dit qe le pleintif tient de luy par plusours services qil navoit[14] counte, et dit outre nient destreint par sa defaute.—*Et alii e contra.*—Le pleintif pria jugement del principal, de sicom il avoit conu laquitance estre due, et avoit jugement qil recoverast laquitance, et lissue resceu, *ut supra,* pur[15] les damages. Meene.[11]

§ *Nota*[16] qen bref de mene le defendant fist protestacion qe le pleintif tint par plusours services, et dit qil ne fust pas destreint par sa defaute; et fust agarde qe le pleintif[17] recoverast lacquitance, et enquest pur damages. *Simile supra termino Michaelis anno xiiij.* Nota: Meen. [Fitz. *Mesne,* 38.]

[1] Et is not in L.
[2] L., le dreyn issue; Harl., lissue, instead of le dereine issue.
[3] il is not in L.
[4] L., issint.
[5] ne is in L. alone.
[6] Harl., par priorite.
[7] Compare No. 49 next below.
[8] From T., L., and Harl. 741.
[9] Harl., mettra.
[10] L., poynt, &c.
[11] L., Men.
[12] From L., and Harl. 741, as far as the point at which the larger type ends.
[13] un is not in Harl.
[14] L., avoit.
[15] L., et puis.
[16] This report of the case is from T., L., and Harl., there being two reports of it in the two latter MSS.
[17] L., qil, instead of qe le pleintif.

A.D. 1340–1. Trespass.

(30.) § Trespass, which R. brought in respect of 25 stones of wool, in a canvas, taken and carried away.—*Pole.* We tell you that A., B., and C., were appointed by the King's commission to take a moiety of the wools then shorn [1] in the same county to the use of the King, and they, by this deed, made those against whom this writ is brought their deputies; and that in respect of which he complains was the moiety of these wools; therefore we took it by force of our warrant and delivered it to our principals, and they have accounted for it in the Exchequer; judgment whether tort, &c. And, as to the canvas and the coming with force and arms, Not Guilty.—*Thorpe.* We tell you that you took the moiety of our wools at another time; and, in addition to this, you took the 25 stones, as we complain; ready, &c.—*Pole.* We tell you that we took one sack and three stones of wool, as wool detained by others who had commission, and so we admit the taking of more than that in respect of which you complain.—*Thorpe.* In your justification you have spoken only of the commission by which you took the moiety of the wools, and that of which you have now spoken would be another justification, to which you shall not be admitted; judgment.—*Pole.* We took

[1] The translation is in accordance with the corresponding words of the record.

A.D. 1340–1. Trespas.

(30.)[1] § Trespas,[2] qe R.[3] porta de xxv. pieres de leine, en un sarpler,[4] pris et enportes.—*Pole.* Nous vous dioms qe A., B., et C. furent assignes par commission le Roi a prendre en mesme le counte la moite de leynes al oeps le Roi, les queux par ceo fet firent ceux[5] vers queux ceo bref est porte[6] lour[7] deputes; et ceo dont il se pleint si fust la moite de ces leines; par quei nous le primes par force de nostre garrant, et le liverames a noz[8] sovereins, de quei il ount acompte[9] en leschequer; jugement si tort, &c. Et quant al sarpler et le[10] venir a force, &c., de rien coupable.[11]—*Thorpe.* Nous vous dioms qe vous preistes la moite de nos leynes a autre temps; et, estre ceo, vous pristes les xxv. piers come nous pleinoms; prest, &c.—*Pole.* Nous vous[12] dioms qe nous prismes un sake et iij. piers de leynes, come leyns arestuz[13] par autres qavoint commission, et issi conissoms la prise de pluis qe vous ne pleygnes.—*Thorpe.* En vostre justificacion vous avez parle soulement de la commission par quele[14] vous[15] pristes la moite de leynes, et ceo qe vous avez parle[16] ore [serreit autre justificacion, a quei vous ne serrez pas resceu; jugement.—*Pole.* Nous prismes les xxv. pieres][17] come la moite;

[1] From T., L., and Harl. 741, but corrected by the record *Placita de Banco*, Hilary, 15 Edw. III., R°. 241, d. It there appears that the action was brought by Robert de Croylond, parson of the church of Oundle, against John de Thame, the elder, and Reginald Andrew.

[2] L., *Breve de transgressione.*

[3] T., L., and Harl., J.

[4] L., sapplere. In the record it appears that the carrying off was alleged of "xxv. petras lanæ et "duos saccos cannabi."

[5] T., ses; Harl., ces.

[6] The words est porte are not in L.

[7] lour is not in Harl.

[8] L., voz.

[9] L., accepte.

[10] le is in T. alone.

[11] According to the record the plea of not guilty was in respect of the "duos saccos cannabi."

[12] vous is not in Harl.

[13] Harl., arestis.

[14] L., and Harl., quei.

[15] vous is not in L.

[16] T., parlez, instead of avez parle.

[17] The words between brackets are not in Harl.

A.D. 1340–1. the 25 stones as the moiety; ready, &c.—*Thorpe.* You took 25 stones in addition to the moiety; ready, &c.—And the other side said the contrary.—And *R. Thorpe* said that if he took more than the moiety by colour of the commission, whatever he took beyond the certain amount was a tort, against the peace.[1]

Replevin. (31.) § In a Replevin brought against the Abbess of Shaftesbury, *Thorpe* avowed for the reason that one Walter de Buddebury heretofore held certain tenements of the Abbess by homage, fealty, [scutage, and the services of 25*s. per annum,* paying 20*s.* thereof by equal portions at certain feasts, and the residue of][2] the rent (5*s. per annum*) at one certain term, at the larder of the Abbess, and by suit to the court of her manor of Bradford, &c., and by suit to her Hundred of Bradford, &c.; and he alleged the seisin [of Walter] and that Walter enfeoffed such an one, who attorned in respect of a part of the services, and who by fine rendered to such an one for term of life, with remainder over to the plaintiff in fee tail, with remainder over to another in fee simple; and he avowed upon the plaintiff, tenant in tail, the taking of one beast for the homage and of another for the 5*s.* payable at the larder.—*R. Thorpe.* You have avowed for suit to the court of your manor which is a place uncertain, for a manor may extend into divers vills and into divers counties, whereas the law requires that suit must be done in a place certain; judgment of the form of the avowry, &c.—*Thorpe.* It would also

[1] According to the record the jury found for the plaintiff, with damages 14 marks. Judgment was given that he should recover the damages and that the defendants should be taken. The plaintiff had execution by *Elegit.*

[2] The words between brackets have, for the sake of clearness, been introduced into the translation in accordance with the corresponding part of the record.

prest, &c.—*Thorpe.* Vous pristes les xxv. pieres outre la moite ;[1] prest, &c.—*Et alii e contra.*—Et[2] *R.*[3] *Thorpe* dit,[4] sil prist plus qe la moite par colour de la commission, quant qil prist outre le certein ceo fust tort, contre la pees. A.D. 1340-1.

(31.)[5] § En un[6] *Replegiari,* porte vers Labbasse[7] de Shafton,[8] *Thorpe* avowa par le resoun qe un Walter de Buddebury[9] tint jadis tiels[10] tenementz del Abbesse par homage, fealte, et par la rente de v. sols par an[11] a[12] tiel terme, al larder Labbesse, et par suyte a la court de son manere de Bradeford,[13] &c., et par suyte a son hundrede de Bradeford,[13] &c., et lia seisine, la quele[14] enfeffa un tiel, qe sattourna de partie des services, le quel par fyn rendi a un tiel a terme de vie, pus le remeindre al pleintif en fee taille, pus le remeindre en fee simple a un aultre ; et avowa sour le pleintif, tenant en la taille, la prise dun beste pur lomage[15] et dun autre pur lez v. *s.* a larder, &c.—*R. Thorpe.* Vous avez[16] avowe pur suyt alla Court de vostre manere qest lieu noun certeyn, qar maner se put estendre en divers villes et en divers countez, ou le ley[17] voet[18] qe suyte dait[19] estre fait en lieu certeyn ; jugement de la forme, &c.—*Thorpe.* Auxi Replegiari. [Fitz. *Avowre,* 106.]

[1] The words outre la moite are not in Harl.

[2] Et is in Harl. alone.

[3] *R.* is in T. alone.

[4] dit is not in T.

[5] From L. and Harl. 741, as far as the point at which the larger type ends, but corrected by the record, *Placita de Banco,* Hilary, 15 Edw. III. R°. 120. It there appears that the action was brought by Roger de Bradelegh against the Abbess of "Shafton" (Shaftesbury).

[6] un is not in Harl.

[7] Harl., Labbe.

[8] L, Malmesbury; Harl., Glastonbure.

[9] L., and Harl., A., instead of Walter de Buddebury.

[10] L., cez.

[11] L., anne.

[12] a is not in Harl.

[13] L., and Harl., T.

[14] Harl., le pleintif, instead of la quele.

[15] Harl., le homage.

[16] avez is not in Harl.

[17] L., lye.

[18] voet is not in Harl.

[19] Harl., deist.

A.D. 1340-1. be uncertain to say "to his court in such a vill," for a vill may be in divers counties as well as a manor, and even though we had said in a place certain, and had aliened that place, still we should have the suit in another place within the manor.—*R. Thorpe.* I say that you would not, for the tenements are held by doing suit only at the place at which it is accustomed to be done.—The exception was not allowed.—*R. Thorpe.* Again, judgment of the avowry, for you suppose one and the same tenancy to be held by divers suits, and that is contrary to law, because, for anything that you have said, the two suits may be on one and the same day, with which no one can be charged; judgment, &c.—*Stouford.* One may be charged with divers suits to divers courts according to the manner of his feoffment. Besides, the question whether the avowry is good or not, as to the suits, is not to be tried now, for the avowry is made for other services.—Therefore the exception was not allowed.—*R. Thorpe.* As to the 5*s.* payable at the larder, one Mary, your predecessor, with the consent of the Convent, by this deed, released the 5*s.* by the name of tallage, by words to the effect that, although such a tallage, which was not due, had before been paid, the then Abbess, and the Convent released it.[1] As to the homage, neither the Abbess nor her predecessors ever were seised. And

[1] According to the plea in the record, the predecessor "unanimi "consensu capellanorum suorum "condonavit et quiete clamavit "cuidam Gilberto de Budbury, "cujus statum ipse Rogerus habet, ". . . et heredibus suis, tallagium "factum ad lardarium in festo "Sancti Martini quod senescalli "sui injuste et sine assensu suo de "illo ceperunt."

noun certeyn serra il[1] a dire a sa court en tiel ville, qar ville[2] put estre en[3] divers countez com manere, et mes qe nous[4] deissoms en certeyn lieu, et nous ussoms aliene ceo lieu,[5] unqore nous averoms la suyte en autre lieu dedeynz[6] le manere. — *R. Thorpe.* Jeo di qe[7] non, qar les tenementz ne sount[8] tenuz de faire suyte forsqe al lieu ou il sount acostomes.[9]—*Exceptio non allocatur.*[10]—*R. Thorpe.* Unqore jugement del avowere, qar vous supposez un mesme tenance estre tenu[11] par divers suytez, quel chose est contre ley, qar, pur rien qe vous avez dit, lez deux suytez pount[12] estre a un mesme jour, des queux[13] un persone ne doit mye charger; jugement, &c.—*Stouff.* De divers[14] suytez a[15] divers courts put home estre charge[16] solom la manere de son feffement. Estre ceo, le quele lavowere est bon ou noun, quant a les sutes,[17] nest pas a trier ore, qar lavowere est fait pur autres services.—*Ideo exceptio non allocatur.*—*R. Thorpe.* Quant a[18] v. *s.* al larder, un Marie, vostre[19] predecessour, par assent de Covent, par ceo fait, relessa les v. *s.* par noun de tallage[20] par tiels parouls coment qe un tiel tallage fuit paie devant, quel ne fuit pas due, Labbesse[21] qe a donqe fut, et le Covent relesserent.[22] Quant al homage, Labbesse ne ses predecessours ne furent[23] unqes seisi, fesaunt

A.D. 1340–1.

[1] il is not in L.
[2] The words qar ville are not in L.
[3] L., faite en.
[4] L., vous.
[5] L., celle, instead of ceo lieu.
[6] Harl., deynz.
[7] qe is not in L.
[8] Harl., sount pas.
[9] L., acostimes.
[10] L., Et noun allour, instead of *Exceptio non allocatur.*
[11] Harl., tenus.
[12] Harl., poent.
[13] queux is not in L.
[14] Harl., deux divers.
[15] Harl., et.
[16] L., se charger, instead of estre charge.
[17] L., al suyte, instead of a les sutes.
[18] L., al.
[19] L., nostre.
[20] Harl., taillage.
[21] L., al Abese, instead of Labbesse.
[22] L., relessa.
[23] The words ne furent are not in Harl.

A.D. 1340–1. *R. Thorpe* made protestation that they did not admit the other services.—*Thorpe.* We have avowed for the 5*s.* as for services, and you show a release in respect of a tallage which does not relate to the matter for which we have avowed; judgment.—*R. Thorpe.* We pray that it be recorded that she does not deny the deed; and it remains to be proved afterwards whether the deed is pertinent to the plea or not.—*Thorpe.* In the time of Mary, our predecessor, whose deed you show, the stewards of the Abbess were seised of certain customs, in the form of rents and other profits regardant to the larder of the steward; and we say that these 5*s.* comprised in this release were levied by extortion at the larder of the steward; and, in addition to these 5*s.*, we and our predecessors have, since the time of memory, been seised of the 5*s.* for which we avow.[1]—*Blaik.* The 5*s.* comprised in the release are the 5*s.* for which you avow, without this that the stewards of your predecessors were ever seised of any other rent payable at the larder of the stewards; ready.—And so to the country.

Avowry. § Avowry for a Prioress, for the reason that the plaintiff held of her by suit to her court of T., and suit to her Hundred, and by the service of 20*s.*, and 5*s.* payable at her larder, and by homage; and for the 5*s.* and the homage she avowed.—*Thorpe* produced a release by her predecessor and the Convent of the 5*s.* payable at the larder.

And the deed purported that she released the tallage payable at the larder, which her steward took by extortion, which was

[1] According to the record the replication was that there was within this manor of Bradford a custom "quod tenentes ipsius Abbatissæ, qui tenuerunt per certa servitia, solverunt senescallo ipsius Abbatissæ, qui pro tempore fuerit, quoddam certum, quod vocatur donum senescalli, ad lardarium ipsius senescalli, ultra servitia quæ solverunt Abbatissæ, &c., et dicit quod . . . . . quidam senescallus . . . . . levavit per extortionem de prædicto Gilberto de Buddebury prædictum tallagium, quod vocatur donum senescalli, ultra prædictos viginti et quinque solidos." It was this donum" that the predecessor condonavit et remisit"; but the 5*s.* for which the Abbess avowed were part of the 25*s.*, and were not "relaxati."

protestacion quel ne conusent[1] pas les aultres services. —*Thorpe.* Nous avoms avowe pur les v. *s.* com pur services, et vous moustrez[2] relees dun tallage[3] qe ne refiert pas[4] a la chose pur quel nous avoms avowe; jugement.—*R. Thorpe.* Nous prioms recorde qil ne dedit[5] pas le fait; et sil est pertinent al plee ou ne mye cest[6] aprover[7] apres.[8] — *Thorpe.* En temps Marie, nostre predecessour, qe fait vous moustres, les seneschals labbesse furent seisis de certeins custumes[9] de rentes et autres profits regardants al larder le seneschal; et nous dioms qe ceux v. *s.* compris en cele relees furent levez par extorcion al larder le seneschal; et, estre ceux v. *s.*, nous et nos[10] predecessours avoms, pus temps de memore, este seisi des v. *s.* pur quex nous avowoms.—*Blaik.* Les v. *s.* compris en le relees sunt les v. *s.* pur quex vous avowez, sanz ceo qe les seneschaus[11] voz[12] predecessours unqes ne[13] furent seisi de nul autre rente al larder les seneschaux;[14] prest.[15]—*Et sic ad patriam.* A.D. 1340–1.

§ Avowere[16] pur une prioresse, par la resoun qe le pleintif tient de lui par suyte a sa Court de T. et suyte a son hundred, et par service de xx. *s.*, et v. *s.* a son lardere, et par homage; et pur les v. *s.* et lomage avowa.—*Thorpe* mist avant relees sa predecessour et le covent de les v. *s.* a lardere.—Et le fet voleit *quod remisit tallagium ad lardarium*, quel son seneschal prist par extorcion, qeux furent releses; jugement si par tant Avowri.

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[1] Harl., conisent.
[2] L., moustroms.
[3] Harl., taillage.
[4] pas is not in L.
[5] L., doit.
[6] Harl., fet.
[7] L., aperner.
[8] L., apris.
[9] L., costimes.
[10] L., nostre.
[11] L., le seneschal, instead of les seneschaus.
[12] Harl., vous.
[13] ne is not in Harl.
[14] L., seneschal.
[15] prest is not in Harl.
[16] This report of the case is from T. alone.

A.D. 1340–1. released; judgment whether thereby you can oust us from avowry for the services rightfully due to us.—*R. Thorpe.* If the matter be so, you ought in your avowry to have made mention thereof; for if I hold of you by 20*s.*, and you release 10*s.*, and you afterwards avow for only 10*s.*, I shall bar you by your release.—*Thorpe.* You will not do so; I shall aid myself upon my deed, for I shall not avow for more than is due.—To this the COURT agreed.—*R. Thorpe.* We tell you that he holds by 20*s.* only, and the 5*s.* were attached to the larder, and so they are released by this deed; ready, &c.—*Thorpe.* He holds by the services of 25*s.*, of which 5*s.* were assigned to the larder, and beyond them the steward accroached to his larder other 5*s.*, and these were released and not the first mentioned 5*s.*; ready, &c.—And the other side said that he held by 20*s.* only; ready, &c.—And note that exception was taken to the avowry for that it supposed that the plaintiff held one and the same land by divers suits. This was not allowed, because one is suit royal and the other is suit service.

Execution of a Statute. (32.) § Execution on a Statute Merchant for 200*l.*—The Sheriff returned:—"He is dead." Therefore the plaintiff had execution in respect of the lands which the debtor had on the day of the recognisance or at any time afterwards.—And, because the lands were in different counties, execution was awarded for 100*l.* in one county and for the other 100*l.* in the other county, and not severally in both.

Statute Merchant. § On a Statute Merchant for 200*l.* the party prayed execution in respect of lands in one county as to a moiety, and in respect of lands in another county as to the other moiety. And so he had it.

Error. (33.) § A writ was sent to Simon Fitz-Richard to cause to come into the King's Bench the record and process of a *Quare impedit* which the King brought in Ireland, before the said Richard and his fellows,

de les services de nostre dreit dues nous poet del avowere ouster.—*R. Thorpe.* Si la matere soit tiel, vous duissez, en avowant, aver fait mencion de ceo; qar si jeo teygne de vous par xx. *s.*, et vous relessez les x. *s.*, et vous avowez apres fors pur x. *s.*, jeo vous barray par vostre relees.—*Thorpe.* Noun frees; jeo moy eidera sur moun fet, qar jeo navowera pur pluis qe nest deu. *Ad quod* Curia *consensit.*—*R. Thorpe.* Nous dioms qil tient par xx. *s.* soulement, et les v. *s.* furent attaches a lardere, et issi sont ils relessez par ceo fait; prest, &c.—*Thorpe.* Il tient par les services de xxv. *s.*, de qi v. *s.* furent assignes a lardere, et outre le seneschal accrocha a son lardere autres v. *s.*, qeux sont relesses et noun pas les autres v. *s.* prest, &c.—Et les autres qil tient forsqe soulement par xx. *s.*; prest, &c.—*Et nota* qe lavowere fust chalenge de ceo qil supposa qil tient par divers suytes une mesme terre. *Non allocatur*, qar lun est real et lautre servyce. A.D. 1340–1.

(32.)[1] § Execucion sur estatut marchant de ij. c. *li.* — Le Vicounte retourna il est mort; par quei il ad execucion des terres qil avoit jour de la reconisance oue unqes puis.[2]—Et, pur ceo qe ses sont en divers countes, execucion est agarde de c. *li.* en lun counte et de les autres c. en lautre counte, et ne mye severalment en lun et lautre. Execucion dune estatut.

§ En[3] statut marchaunt de cc. *li.* la partie pria execucion de terres en un counte quant a la moite,[4] et[5] en un[6] autre counte de lautre moite. *Et sic*[7] *habuit.* Statut Marchaunt. [Fitz. *Execucion*, 60.]

(33.)[8] § Bref fut maunde a Symond fitz Richard, de faire vener le record et proces[9] en Baunk le Roy dun *Quare impedit* qe le Roy porta en Irlaund,[10] devant le dit Richard et ses compaignons, Justices Errour. [Fitz. *Recorde*, 38.]

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[1] From T. alone, as far as the point at which the larger type ends.

[2] T., pluis.

[3] This report of the case is from L., and Harl. 741.

[4] L., mote.

[5] et is not in L.

[6] un is not in Harl.

[7] *sic* is not in Harl.

[8] From L., and Harl. 741, until otherwise stated, but corrected by the record *Placita Coram Rege*, Hilary, 15 Edw. III., R°. 117, for which see Appendix.

[9] L., corps, instead of record et proces.

[10] The words en Irlaund are not in Harl.

A.D. 1340–1. Justices of Dublin, against James, Earl of Ormond, and Master Luke de Loundres, for divers errors. And the errors were assigned. — *Thorpe,* for the King. Sir, you will find there, by the record, that the writ which was sent to the Justices, to cause the record to come before you, was returnable in this Court on the Quinzaine of Saint Michael last past, and the writ and the record were not sent to you during Michaelmas Term, but in this term ; therefore, it has come without warrant.—SCARDEBURGH. There is often hindrance in the passage, and we must therefore admit and accept it as the record. Besides, no record now remains with them, and so, if we would not allow this as the record, the record then would be rendered non-existent both here and there.—Therefore the exception was not allowed.—*Thorpe.* You will find that the writ is sent to Simon Fitz-Richard, without naming him "Justice," wherefore he had no warrant by this writ to send the record.—SCARDEBURGH. There occur afterwards in the writ the words "before you and your fellows, our Justices of "Dublin."—Therefore the exception was not allowed. —*Thorpe.* The record is caused to come at the suit of Luke, and the record proves that he did not claim anything in the advowson, and said that he was parson imparsonee, against whom a writ of this nature does not lie ; and this was held as not denied, and the King did not recover any damages ; therefore it seems that this

de Dyvelyn,[1] vers James Counte de Ormond, et Mestre Lucas de Loundres, pur divers errours. Et les errours furent assignez.—*Thorpe,* pur le Roy. Sire, vous troverez[2] la,[3] par le record, qe le bref qe[4] fuit maunde as Justices, de faire vener le record devant vous, fuit[5] returnable ceynz a la xv. de[6] Seynt Michel dreyn passe, et le bref et le record ne furent pas mandez a vous durant le terme de Seynt Michel, eynz ceo terme, par quei ceo[7] est venuz sanz garrant.—Scarb. Il ad destourbaunce de passage sovent, par quei il coveynt qe nous[8] le resceyvoms et acceptoms pur le[9] record. Estre ceo, nul record demore[10] ore devers[11] eux, issint, si nous ne vodroms mie allower ceo[12] pur record, donqes serra le record amorti icy[13] et la.—*Ideo non allocatur exceptio.*—*Thorpe.* Vous troverez qe le bref est maunde a Symond fitz Richard, nynt nomant luy Justice, par quei il navoit pas garrant par[14] ceo bref de mander[15] record.—Scarb. Le bref parle[16] apres *coram vobis*[17] *et sociis vestris*[18] *Justiciariis nostris* de Dyvelyn.—*Ideo exceptio non allocatur.*—*Thorpe.* Le record est fait vener a la suyte Lucas, et le recorde prove qil[19] ne clama rien en lavoweisoun, et dit qil fuit persone enpersone, vers qi tiel[20] bref ne gist pas, quel chose fuit tenu a nynt dedit, et le Roy ne recovera nuls[21] damages, par quei il semble qe cest[22] suyte nest pas

A.D. 1340–1.

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[1] Harl., Develyn.
[2] Harl., trovez.
[3] la is not in L.
[4] qe is not in L.
[5] fuit is not L.
[6] de is not in Harl.
[7] L., il.
[8] Harl., vous.
[9] le is not in Harl.
[10] Harl., demorust.
[11] Harl., vers.
[12] Harl., a ceo.
[13] Harl., si.
[14] L., pur.
[15] L., a demander instead of de mander.
[16] parle is not in Harl.
[17] L., *nobis.*
[18] L., *nostris.*
[19] L., qe.
[20] Harl., cel.
[21] L., nulles.
[22] Harl., set.

A.D. 1340–1. suit is not given to him.—*R. Thorpe.* He is endamaged in so far as he lost the church; wherefore, &c. And it has been seen that one to whom there belonged a reversion of land lost by judgment, although he was not admitted to defend his right, has had suit to reverse the judgment.—*Thorpe.* Even though he had not been named in the writ, he would lose the benefice; wherefore, &c. Besides, if we had a release made by the Earl against whom judgment was given, he would not be admitted to reverse the record on your suit; and, as to that loss of the church which you assign, that is a spiritual matter, in respect of which suit is given you in Court Christian, in case it should happen that the record should be reversed at the suit of the patron.—One error assigned was in that, whereas the parties had pleaded to judgment and had thereupon been adjourned, afterwards on another day, by reason of the default of the Earl, they respited judgment to divers days, and afterwards proceeded to judgment without distraining the Earl to hear his judgment; in that respect they erred, for it is not found by record that the Earl came into Court by distress.—*Thorpe.* Even if he did come by distress, the enrolment would be in the form "such an one was summoned to answer," &c. Besides, they pleaded to judgment upon a peremptory exception, in which case, if the party make default afterwards, judgment shall be given immediately. Besides, this judgment was given against another, and by reason of another's default, and not against you; wherefore it is not for you to assign error in that respect.—Then an error was assigned in that it is supposed in the record that the King supposes by the writ that it belongs to him, &c., by reason of the non-age of the heirs of J.

done a luy.—*R. Thorpe.* Tant est il endamage qil perdy leglise; par quei, &c. Et home ad veu qe celuy a qi la reversion fuit de terre perdu par jugement, tot ne fut il pas resceu a defendre son dreit, qil ad eu seut[1] de reverser le jugement.—*Thorpe.* Tute nust il este nome en le bref il perdreit le benefice; par quei, &c. Estre ceo, si nous ussoms relesse du Counte vers qi jugement se tailla, ne serra pas resceu de reverser la recorde a vostre suyte; et, en dreit de cele perde del eglise, qe vous assignez, ceo est espiritualte, de quel la suyte vous est done en Court Christiene, si cas aveigne qe[2] le recorde fuit reverse a suyte de patron.—Un errour fut assigne de ceo qe, la ou les parties avoint plede en jugement et sur ceo furent ajournez, pus a lautre jour par defaute del Counte, ils respiterent le jugement a divers jours, pus allerent[3] a jugement sanz destreindre le Counte doier[4] son jugement; en tant errerent[5] ils, qar il nest pas trove par record qe le Counte vynt en Court par destresse.—*Thorpe.* Tot vynt il par destresse lenroulement serra *talis summonitus est ad respondendum, &c.* Estre ceo, ils pledrent en jugement sour excepcion peremptorie, en quel cas, sil face defaute apres, le jugement se fra mayntenant. Estre ceo, cel jugement se fit devers[6] aultre, et par autri defaute, et neynt vers[7] vous; par quei a vous nattient pas dassigner errour en cel.—Puis un errour fuit assigne de ceo qe le recorde suppose qe le Roy suppose par le bref[8] qe a luy appent, &c., *ratione minoris ætatis heredum J.*,[9] *in manu sua existentis,* supposant le mendre age estre en

A.D. 1340-1.

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[1] L., suyet, instead of eu seut.
[2] L., et.
[3] L., alier; Harl., a aler.
[4] L., doire.
[5] L., errirent.
[6] L., vers.
[7] vers is not in Harl.
[8] L., and Harl., recorde.
[9] L., and Harl., T.

A.D. 1340-1. being in his hand, thereby supposing the non-age to be in the King's hand, which could not be.—*Thorpe.* The original writ is not here, and that to which you take exception was in the King's count, and, if the original writ be in those words, then will the exception be given as to the writ, and therefore it is necessary that the original writ be caused to come.—Then an error was assigned in that, whereas the King by reason of seignory, as by prerogative, made title to the wardship of the land to which the advowson is appendant, it was said that the seignory came into the hand of King John by escheat, to which there was no reply on behalf of the King, yet judgment was given for the King, and in that respect they erred.—*Thorpe.* The record proves that the King made title in that Peter de Bermyngham, the infant's father,[1] through whose non-age the King took his title, held *in capite* of the King the manor of Esker, and died seised of that manor, and of the manor of Knockgraffon, to which the advowson is appendant, and the King seized into his hands both manors, and during that time the church became vacant, in which case it belongs to the King to present, inasmuch as he was, at the time of the vacancy, seised of the manor to which the advowson is appendant, without having regard to the other manor, whether it was held *in capite* or not.—*R. Thorpe.* Since the King took his title from the non-age of this same James against whom he brought his writ, while by the King's title the freehold of the manor to which the advowson is appendant was affirmed in the person of James, it suffices for him to show that the King had no right to the wardship, &c.[2]

[1] According to the record Peter de Bermyngham was the father of John, Earl of Louth, from the non-age of whose three daughters and coheiresses the King took his title. *See* Appendix.

[2] The words here attributed to *R. Thorpe* have no equivalent in the record.

la mayn le Roy, qe ne put estre.—*Thorpe.* Loriginal nest pas issi,[1] et ceo qe[2] vous chalengez fuit en le counte le Roy, et, si loriginal soit tiel, donqes serra le chalenge[3] done al bref, par quei il coveynt qe loriginal[4] soit fait venire.—Puis un errour fut assigne de ceo qe, la ou la Roy par resoun de seignurie, com par prerogative, fit title de la[5] garde de la terre a quel lavowesoun appent, fuit dit qe la seignurie deveynt[6] en la mayn le Roy J. par eschete, a quei rien ne[7] fut replie pur le Roy, *tamen* jugement se fist pur le Roy, et en tant ils errerent.—*Thorpe.* Le recorde prove qe le Roy fist title de ceo qe Piers de Bermyngham, pere lenfant, par qui noun age le Roy prist son title, tynt en chief del Roy le manere de Esker,[8] et morust seisi de cel manere, et del[9] manere de Cnokgraffan,[10] a quel lavowesoun appent, et le Roy seisi en sa mayn lun manere et lautre, a quel temps leglise se voida,[11] en quel cas al Roy appent a presenter, par taunt qil fuit seisi, al temps de voidance, del manere a quel lavowesoun est appendante, sanz aver regarde de lautre manere le quel ceo fuit tenu en chief ou noun.—*R. Thorpe.* Del houre qe le Roy prist soun title de noun age mesme celuy James vers qi il porta soun bref, ou par le title le Roy franctenement del manere a quel lavowesoun est appendant[12] fuist afferme en la persone James, suffit a luy a[13] moustrer qe le Roy nad pas dreit a la garde, &c. A.D. 1340–1.

[1] Harl., si.
[2] qe is not in Harl.
[3] loriginal, instead of le chalenge.
[4] L., ceo.
[5] L., sa.
[6] Harl., devient.
[7] ne is not in L.
[8] The name of the manor is from the roll. L., C.; Harl., E.
[9] Harl., du.
[10] The name of the manor is from the roll. L., and Harl. T.
[11] L., vouda.
[12] The words est appendant are not in Harl.
[13] L., de.

A.D. 1340-1. Error.

§ Error, assigned by a parson in a *Quare impedit* which the King brought in Ireland, when he recovered against the patron. And the parson was named in the writ, and was amerced. And note that the record did not come into the King's Bench on the same day on which they were commanded to have the record there, but a long time afterwards; but they had a writ, notwithstanding that, to proceed. And he assigned error in that, whereas he claimed nothing but as parson, yet he was amerced, and several other errors. —*Thorpe.* The writ is not here; wherefore you have not the full record, so you can do nothing.—SCOT. That is of no consequence, unless defect were assigned in the writ.—*Thorpe.* At the suit of him who claimed nothing error cannot be assigned except as regards the amercement; and, even though the judgment be reversed on that point, it will stand good as to the principal matter, for to the principal matter he is no more a party than if he had not been named in the writ.—*Pole.* It is for him who lost by the judgment to reverse it; now by the erroneous judgment he is out of his church; and so, if it were reversed, he could have his church again by process in Court Christian.—And to this the COURT agreed.—One error was assigned in the writ, that it was bad and unintelligible; and that could not be decided without the writ. Another error was assigned in that, whereas it was supposed on behalf of the King that one J. held of the King the manor of Esker, to which, &c., and the other said that Leinster was a great territory holden of King Henry *in capite*, whereof the manor was parcel, by one A., as mesne between the King and one W., who forfeited, on whose forfeiture the King entered and enfeoffed the infant's ancestor, and that the King had no right to have had the wardship unless it was holden as of his Crown, for in such case the King will enfeoff to hold as of other seignories, and his title in the *Quare impedit* was by reason of wardship,—yet not-

A.D. 1340–1. Errur.

§ Errour[1] assigne par la persone en un *Quare impedit* qe le Roi porta en Irlande et recoveri vers le patron. Et la persone fust nome el bref, et amercie. *Et nota* qe le recorde ne vient pas en Bank le Roi a mesme le jour qil furent comande daver le recorde la, mes long temps apres; mes il avoint bref, *non obstante* cela, daler avant. Et assigna errour qe, la ou il clama rien mes come persone, il fust amercie, et autres plusours errours.—*Thorpe.* Le bref nest pas icy; par quei vous navez pas pleein record, issi ne poez rien faire.—Scot. De ceo il ny [ad] force, si defaute ne fust assigne en le bref.—*Thorpe.* A sa suyte qe rien ne clama ne poet errour estre assigne sil ne fust en la merciement; et, tout soit le jugement reverse en ceo point, il esterra en le principal, qar al principal nest il nient pluis partie qe sil nust pas este nome el bref. —*Pole.* A celui qe perdi par le jugement est il a reverser le; ore par le jugement erroigne est il hors de sa eglise, et issi, [sil] fust reverse, il purreit reaver sa eglise par proces en Court Christiane. – Et a ceo sacorda Court.—Un errour fust assigne en le bref, qe fust malveys et saunz entendement; et cel ne poet estre juge sanz le bref. Un autre errour fust assigne qe, la ou pur le Roi fust suppose qun J. tient du Roi le manoir de Esker[2] a qi, &c., et lautre dit qe la legene est une grande pais [qe] fut tenue du Roi H. en chief, de quei le manoir est parcelle, par un A, come mene entre le Roi et un W. qe forfist, par qi forfaiture le Roi entra et feffa launcestre lenfant, issi qe le Roi navoit dreit daver eu garde sil nust este tenu de sa corone, qar en tiel cas le Roi feffera a tenir des autres seignurages, et son title fust par resoun de garde en le *Quare impedit*, et *non obstante* il agar-

[1] This report of the case is from T. alone.

[2] T., B.

A.D. 1340–1. withstanding, they awarded a writ to the Bishop; so they committed error.—*Thorpe.* The judgment was good; for whether the King was rightfully or wrongfully seised of the manor to which the advowson, &c., it belonged to him to present. Besides, it is not proved or pleaded that it is holden of any other than the King; for perchance the King gave the manor to be holden of him. — *Pole.* That is not so when others have seignory, but in such case he will always give it to be holden of the lords.—Scot. It is not so; for if the King enfeoff thus, "rendering to him, &c.," the seignory is his, and the lower seignories are extinguished by his possession, but they will have no rent seck; the contrary holds good in case of a lease.—*Blaik.* At Durham the Bishop came unto possession of land and made a feoffment, and the person who previously had a seignory was ousted from an avowry until the Bishop had revoked the charter; and so in the *Quare impedit,* it was no plea to say that the manor was not holden of the King; but in a writ of Wardship that could be pleaded.—And note that in this plea it was admitted to be law that he to whom the reversion belongs can reverse a judgment which passed against the tenant for term of life.—And another error was assigned in that, whereas they had a day at the Quinzaine of St. Michael, the words of the record were "process being continued until the Octaves of St. Martin," without giving a day to the parties, and thus process was discontinued. And another error assigned was that when they had pleaded to the country the defendant made default, and they were adjourned, and, on the day given, without making process on the default, they awarded a writ to the Bishop.—*Thorpe.* The first point is not error; for, since it was the same term, it was not necessary to give a day to the parties in any other way. And, as to the other point, the judgment was good; for when one has appeared and pleaded in a *Quare impedit,* on his default afterwards, a writ shall

derent bref al Evesqe; issi errerent. — *Thorpe.* Le jugement fust bon; qar fust le Roi scisi a dreit ou tort del manoir a qi lavoesoun, &c., a lui apendy a presenter. Ovesqe ceo, il nest pas prove ne plede qe cest tenu dautre qe de Roi; qar le Roi dona le manoir par cas a tenir de lui.—*Pole.* Ceo nest pas issi quant autres ount seignurie, mes durra tout temps en tiel cas a tenir de seignurs.—Scot. Ceo nest pas issi; qe si le Roi feffe issi, rendant a lui, &c., la seignurie est la sue, et les seignurs pluis bas esteintz par sa possession, mes il averont nul rente sek: *contrarium est* les.—*Blaik.* A Duresme Levesqe avient a une terre et fist feffement, et celui qe avoit devant seignurie fust ouste del avowere tanqil repele la chartre; et auxi en le *Quare impedit* ceo ne fust plee a dire qe la manoir nest pas tenue du Roi; mes en bref de garde la purra ceo estre plede.—*Et nota* qen ceo plee fust graunte pur ley qe celui a qi reversion apent reversera jugement qe passa contre tenant a terme de vie.—Et autre errour fust assigne qe, la ou il urent jour a xv. de Scint Michel, le record voet *continuato processu* tanqe les utaves de Seint Martyn, sanz doner jour as parties, issi discontinue. Et un autre et auxi quant il avoint plede au pais le defendant fist defaute, qe furent ajournez, a quel jour, sanz faire proces pur la defaute, il agarderent bref al Evesqe.—*Thorpe.* Le primer point nest pas errour; qar, quant ceo fust mesme le terme, il bosoigna pas a doner jour as parties autrement. Et quant a autre point le jugement fust bon; qar quant homme ad aparu et plede en *Quare impedit,* par sa defaute apres, tantoust [istra] bref al Evesqe sanz proces faire sur la defaute.— A.D. 1340–1.

A.D. 1340-1. immediately issue to the Bishop without making process on the default.—To this the COURT agreed.—And afterwards because a defect was assigned in the original, that is to say, in the words, *ratione* [*minoris ætatis*] *heredum in manu Regis existentis*, &c., which defect can not be tried without the writ, they had a writ to the Justices of Ireland to cause the writ to come.

Assise of Novel Disseisin. (34.) § One who held certain lands by Statute Merchant brought an assise in the King's Bench; and it was found how he was forcibly taken by the person who made the recognisance to him, and for fear of death swore that he would surrender the land when he went home, and would release all actions of debt and trespass; and then he went to his inn and of his own accord released the action of debt, and afterwards surrendered the land, &c.—And because this was done by reason of his oath, which oath he made by constraint, PARNING and his fellows adjudged it to be a disseisin; wherefore he recovered.—Afterwards the defendant came and prayed a Certificate on that release of debt; and he had it, notwithstanding that by the assise the release was in a manner made void. And he prayed also a *Supersedeas* as to the damages; and this he could not have.—*Quære:* for the release was made before the entry, so that the release might prove the entry to be good or bad, on which the party could have Attaint.

Assise of Novel Disseisin. § In an assise in the King's Bench it was found that the plaintiff was seised by execution of a Statute Merchant made by the defendant, and that the plaintiff was taken by the defendant, and through force, for fear of death, swore that he would surrender the land when he went home, and would release all actions of debt and trespass, and afterwards, on his return home, he, of his own accord, released as above and surrendered the land.—And because he did this by reason of his oath, which oath was made by constraint, PARNING and his fellows adjudged this to be a disseisin, and adjudged recovery.—And the assise was taken by default.—And afterwards the party

Ad quod CURIA *consensit.*—Et puis, pur ceo qe defaute fust assigne en loriginal, saver *ratione heredum,*[1] *in manu Regis existentis, &c.*, quel defaute ne poet estre trie sanz le bref, il ount bref as Justices Dirlande de faire venir le bref. A.D. 1340–1.

(34.)[2] § Un qe tient par estatut marchant certeinz terres porta assise en Bank le Roi; et trove fust coment il fust pris a force par mesme celui qe fist la reconisance a lui, et pur doute de mort jura qil rendreit suys la terre quant il vendreit a mesoun, et qil relerroit toutes accions de dette et trespas; puis vient a lostiel et de son gree relessa accion de dette, et puis rendi suys la terre, &c.—Et pur ceo qe ceste chose fust fait par cause de son serement, quel serement il fist par destresse, PARN. et ses compaignouns ajugerent ceo estre un disseisine; par quei il recoveri. —Puis vient le defendant et pria sur cel relees de dette une certificacion; et lavoit, *non obstante* qe par assise en manere le relees fust voide. Et pria auxi *Supersedeas* de damages; et ceo ne poait il aver.—*Quære:* qar le relees fut fait devant lentre, issi qe le relees poet prover lentre bon ou malveys, de qi partie poet aver atteinte. Assisa Novæ Disseisinæ. [14 Li. Ass., 19.]

§ En[3] assise en Baunk le Roi trove fut qe le pleintif fut seisi par execucion de statut marchaunt fait par le defendant et qe le pleyntif fuit pris[4] par le defendant, et par force, pur doute de mort, jura qe rendreit sus la terre, quant il vendreit en pays, et relessereit totes accions de dettes et de trespas, puis en pays, de soun gree, relessa *ut supra* et rendi sus la terre.—Et pur ceo qil le fit par cause de soun serment, quel serment fuit fait par destresse, PARN. et ses compaignons ajugerent[5] ceo pur disseisine et recoverir.—Et lassise fut prise par defaute.—Et puis la partie qe perdit avoit certificacion Assisa Novæ Disseisinæ. [Fitz. *Dures*, 14.]

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[1] T., *heredis.* But *see* above, p. 331.

[2] From T. alone, as far as the point at which the larger type ends.

[3] This report of the case is from L., and Harl. 741.

[4] L., appris

[5] L., agarderent.

A.D. 1340–1. who lost had a Certificate on the same release, notwithstanding that it was void by verdict, on which verdict he might have Attaint, &c.

(35.) § Execution on a Statute Merchant for J., as executor of E., in a case in which J. was outlawed when execution was awarded, for which reason the King seized the land as J.'s chattel. The person to whom the freehold belonged came within the term, &c., and prayed that he might have the land out of the King's hand, inasmuch as it was not J.'s own chattel; and he said:—J.'s testator has another executor, and if the latter has released, it is reasonable that we should have our land again; and if two persons have a chattel in common, and one be outlawed, the whole is stripped from his possession, and the entirety accrues to the other. And he shewed further how the recognisance was made to E. and D. and their heirs, and that D. survived and released to him.—*Thorpe.* The King is seised, so that he can not be ousted without suit by petition; and if a termor be outlawed, and the King seizes, because he is seised by title he shall not be ousted without suit to him.—Scot. That is true; sue you by petition.—And nevertheless he had a writ from the Chancery, upon his matter, directing that right should be done to him.

Statute Merchant. § An executor had execution of lands by Statute Merchant. Afterwards came the person against whom execution was awarded, and showed that the executor was outlawed, and said that there was another executor, and prayed to have his land again, as the land was seized into the King's hand.

Quare impedit. (36.) § *Quare impedit,* which our Lord the King brought against Richard de Willoughby; and he said that it belonged to him to present, for the reason that

sour mesme le relesse, *non obstante* qe ceo fuit[1] voide par verdit, sour quel verdit[2] il put aver atteynt, &c. A.D. 1340–1.

(35.)[3] § Execucion sur statut marchant pur J., come executour E., la ou J. fust utlage quant execucion fust agarde, par quei le Roi seisist la terre come le chatel J. Vient celui a qi le frank tenement fust et deinz le terme, &c., et pria qil poet aver la terre hors de la mayn le Roi, desicome ceo ne fust pas son chatel propre; et dit qe son testatour ad autre axecutour, le quel sil eit relesse il est resoun qe nous reieyoms nostre terre; et si ij. eient chatel en comune, et lun soit utlage, tout deveste hors de sa possessioun, et lentere acrust a lautre. Et moustra outre coment la reconisance fust fait a E. et D. et lour heirs, et D. survesquist et relessa a lui.—*Thorpe.* Le Roi est seisi issi qil ne poet estre ouste sanz suyte par peticion; et si termer soit utlage, et le Roi seisist, pur ceo qil est seisi par title, il ne serra pas ouste saunz suyte vers lui.— Scot. Cest verite; sues par peticion.—*Et tamen* il avoit bref de la Chauncellerie, sur sa matere, qe resoun lui fust fait.

§ Executour[4] avoit execucion dez terres par statut marchaunt. Puis vynt celuy contre[5] qi execucion fuit agarde, et moustra qe lexecutour fuit utlaghe,[6] et dit qil avoit autre executour, et pria de reaver sa terre, cum la terre[7] fut seisi en la mayn le Roy. Statut Marchaunt.

(36.)[8] § *Quare impedit* qe nostre seignur le Roi porta vers Richard de Wylugby;[9] et dist[10] qe a lui appent a presenter, par la resoun qun Piers de Seint Quare impedit.

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[1] fuit is not in L.

[2] L., qil, instead of quel verdit.

[3] From T. alone, as far as the point at which the larger type ends.

[4] This report of the case is from L. and Harl. 741.

[5] L., encontre.

[6] Harl.. utlaige.

[7] The words cum la terre are not in Harl.

[8] From T., L., and Harl. 741, but corrected by the record *Placita de Banco*, Hilary, 15 Edw. III., Rº. 388.

[9] L., Wiluby; Harl., Wilby.

[10] L., and Harl., dit.

A.D. 1340–1. one Peter de St. Laurence, Prior of Bermondsey, held of him the manor of Wydeford,[1] to which the advowson was appendant, which Prior was an alien, wherefore all his lands, fees, and advowsons, by reason of the war between our Lord the King and the French, were seized into the King's hand, and afterwards were given back to the Prior, he rendering a certain rent to the King; and afterwards the Prior, without the King's license, aliened the manor to Richard; wherefore the King seised the manor to which, &c., and so it belonged to the King to present.—*Pole.* The King takes divers titles; one in that the Prior held the manor of him; another for that the Prior was his farmer; the third, that he is seised of the manor to which, &c.—*Thorpe* (for the King). We will take as much as may be for his advantage.—*Pole.* We do not admit that the manor is holden of the King; and we tell you that we are seised of the manor; and we tell you that very true it is that the King seized the Priory and its lands into his hand, and afterwards gave them back again to the Prior, the Prior rendering a certain rent; and then the King confirmed the Prior's estate, to hold in the ancient manner, the Prior rendering to him the *apportum* if any were due for it.—(And he produced the King's patent.)—And at that time the Church was full; and afterwards the Prior enfeoffed us and our wife of the manor; so it belongs to us to present.—*Thorpe.* Now we demand judgment, since they have admitted that the King

[1] *i.e.*, Widford (Herts).

Laurence, Priour de Bermondeseye,[1] tint de lui le manere de Wydeford,[2] a qi lavoesoun est appendant, le quel Priour est aliene, par quei totes ses terres, feez, et avoesouns, par cause de la guerre entre nostre seignur[3] le Roi et ses[4] de Fraunce, furent seisiz en la mayn le Roi, et puis furent renduz arrere al Priour rendaunt certein rente[5] au Roi; et puis le Priour, saunz conge le Roi, aliena le manere a Richard;[6] par quei le Roi seisist le manere a quei, &c., issi appent au Roi a presenter.—*Pole.* Le Roi prent divers titles; un de ceo qe le Priour tient de lui le manere; un autre qil fust son fermer;[7] le terce qil est seisi del manere a quei,[8] &c.—*Thorpe,* pur le Roi. Nous prendoms quanqe[9] purra estre pur lui.—*Pole.* Nous conisoms[10] pas qe le manere est tenu du Roi; et vous dioms qe nous sumes seisi de manere; et vous dioms qe bien est verite qe le Roi seisi la Priorie[11] et ses terres en sa mayne, et pus les livera arrere au Priour, rendant certeine ferme; et pus le Roi conferma son estat, a tenir en son anciene cours, rendant a lui laport si nul y fust due;[12] et mist avant la patente le Roi; et a cel temps leglise fust pleine; et puis le Priour enfeffa nous et nostre femme de manere; issint appent il a nous a presenter.—*Thorpe.* Ore jugement, del houre qil ount conu qe le

A.D. 1340–1.

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[1] T., L., and Harl., B. Priour de Seint Laurence, instead of Piers de Seint Laurence, Priour de Bermondeseye.

[2] T., L., and Harl., B.

[3] The words nostre seignur are in T. alone.

[4] T., and Harl., le Roy; the roll, *illos.*

[5] L., and Harl., ferme.

[6] Harl., al Prior, instead of a Richard. The words of the record are Prior manerium illud, ad quod, &c., postea concessit et dimisit cuidam Willelmo de Cusaunce et prædicto Ricardo et Johannæ uxori ejus ad totam vitam ipsorum Ricardi et Johannæ.

[7] L., fuit seisi de fermer; Harl., fuit seisi fermer, instead of fust son fermer.

[8] The words a quei are not in Harl.

[9] Harl., qant qi.

[10] L., conussoms.

[11] Harl., Priorite.

[12] L., i fuit deinz, instead of y fust due.

A.D. 1340–1. confirmed the estate of the Prior, the latter rendering to the King the *apportum;* and we tell you that ten marks were due in respect of the *apportum,* and so he was the King's farmer; and the alienation is admitted; and we pray a writ to the Bishop.—HILLARY. If he do not hold of the King, although he be the King's farmer, the King ought not, on his alienation, to enter; for if the King give to me land which is holden of you, I rendering to him a certain rent, the King cannot enter, although I alien; now the *apportum* which is due to his chief beyond does not prove, although it was reserved to the King, that the manor is holden of the King; for perchance the Prior did not previously hold of him to whom he paid the *apportum.*—*Thorpe.* Every perpetual Prior holds of his superior beyond, for the superior makes the Prior perpetual by his release, the Prior rendering to him a certain rent which must be rent service.—SADINGTON. It is not so; and, even if it were so, still the rent is not issuing from land which he purchased.—Afterwards *Thorpe*[1] said: We abide your judgment on this point

[1] That which is here represented to have been said by *Thorpe* appears in the replication in the record in the following form: — Ivo de Grentemisiel was at one time seised of the manor of Wydeford, and held it of the King *in capite.* By his charter which was confirmed by Henry [I.], King of England, he gave the manor to the then Prior and Monks of Bermondsey, in exchange for the manor of Andredesbury, which one William Belmeis had given them. Afterwards the manor of Andredesbury came into the hand of Robert, Earl (or Count) of Mellent ("*Com. Mell.*"), who, by his charter, gave it to the Prior and Monks in exchange for the manor of Wydeford, which the Earl held of the King *in capite.* Afterwards the manor of Wydeford came into the hand of Robert, Earl of Leicester, son of the Earl (or Count) of Mellent, who also held it of the King, and, by charter, gave it to the Prior and Monks in exchange for the manor of Andredesbury. So the manor of Wydeford, to which the advowson was appendant, was held continuously of the Kings of England for the time being, and of the existing King. The alienation being admitted and no license shown, judgment was, therefore, prayed for the King. Before the part relating to ancient demesne there is interposed, in the record, a rejoinder that the Prior held the manor "in capite de Comite Lan-

Roi conferma lestat le Priour rendant a lui laport; et vous dioms qe x. marcz furent dues de laport, issi fuit il fermer le Roi; et lalienacion est conu; et prioms bref al Evesqe.—HILL. Sil ne teigne du Roi, tout soit il fermer au Roi, le Roi ne deit pas[1] entrer sur salienacion;[2] qar si le Roi doune terre a moi, qest tenu de vous, rendant a lui certein rente,[3] tout aliene jeo,[4] le Roi ne poet entrer; ore[5] laport qest due[6] a son chief[7] de dela[8] ne prove pas, coment qil fust reserve au Roi, qe le manere est tenuz du Roi; qar par cas il ne tient pas devant de cely a qi il fist laport. — *Thorpe.* Chescun Priour qest perpetuel tient de son sovereigne de dela, qar son Priour lui fait perpetuel par son relees, rendant a lui certein rente,[9] quel covient estre rente service.—SAD. Il nest pas issint; et tout fust ceo issi, uncore nest pas la rente issaunt de terre qil purchacea.—Puis *Thorpe.* Nous demoroms en voz jugements sur ceo point pur A.D 1340–1.

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[1] pas is in L. alone.

[2] L., alienacion; Harl., lalienacion.

[3] L., and Harl., ferme.

[4] jeo is not in L.

[5] ore is not in L.; the words mes en are substituted for it in Harl.

[6] T., deu.

[7] Harl., chef.

[8] T., delaa; Harl., de dela et ceo; L., cella.

[9] rente is in L. alone.

A.D. 1340–1

for the King. And we tell that one Ivo de Grentemisiel held the same manor *in capite* of King Henry, and gave it to R. Mellent,[1] Earl of Leicester, which Earl gave the manor to the Prior, for the manor of Andredesbury, and afterwards his son R. took back the exchange and gave the manor of Wydeford back again to the Prior and his successors, which gifts must be to hold of the King. And he said also that it is found in Domesday that this manor is Ancient Demesne, and holden of the King *in capite ;* and we pray a writ to the Bishop.—*R. Thorpe.* We pray to be discharged from both pleas.—And he could not be.—Therefore he said that what was said on behalf of the King was only evidence ; wherefore we will aver that the Prior did not hold the manor of the King.—*Thorpe.* Since you do not deny the record which we have alleged, you cannot say that the manor is not holden of the King, without stating a cause; and moreover this cannot be an issue that the Prior held of the King ; but it is sufficient for the King if the manor be holden of the King.—*R. Thorpe.* All the land in England is holden of the King in chief. And the record which he alleges is before time of memory, and so it is the secret[2] of the King which does not lie in our cognisance, and to which we ought not by law to be put to answer ; but if there be such a record, you ought to sue it for the King ; for neither in an assise of Novel Disseisin nor in a *Præcipe quod reddat,* if it be alleged that tenements

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" castriæ et Leycestriæ, ut de " honore Leycestriæ, et non de " domino Rege in capite. Et " hoc paratus est verificare."

[1] The spelling usually found in English Peerages, &c., has been prserved in this translation.

[2] The words of the record are " quoddam secretum domini Regis " et non de recordo inter partes,"

le Roi. Et vous dioms qune Eve[1] de Grentemisiel si tient mesme le manere [en chief du Roi H.,[2] et le dona][3] a R.[4] Millum, Count de Leycestre,[5] quel Count] dona le manoir al Priour, pur le manere de Andredesbury,[6] et puis R., son fitz, reprist les eschanges et dona le manere de Wydeford[7] arrere al Priour et ses successours [queux douns covendreit estre a tenir du Roi].[8] Et dit auxi qen Domesday est trove qe ceo manere est aunciene demene et tenu du Roi en chief;[9] et prioms bref al Evesqe.—*Robert*[10] *Thorpe.* Nous prioms estre descharge de lune plee ou de lautre. —*Et non potuit.*—Par quei il dit qe ceo qe le Roi dit nest forsqe[11] evidence; par quei nous voloms averer qe le Priour ne tient pas le manere du Roi. —*Thorpe.* Del houre qe vous ne dedites pas le recorde qe nous avoms alege, vous ne poez dire qe le manere nest pas tenuz du Roi saunz cause; et uncore ce ne poet pas estre issu qe le Priour[12] tient du Roi, mes sil soit tenu du Roi[13] suffist au Roi.[14]—*R. Thorpe.* Chescune[15] terre Dengleterre est tenue en chief du Roi. Et le recorde qil allegge est chose devant temps de memore, et issi[16] est ceo la privete le Roi qe ne chiet pas en nostre conisaunce, a[17] quei nous ne devoms par ley[18] estre mys de respondre; mes si tiel recorde y soit, vous le devez suyr[19] pur le Roi; qar en assise de novele disseisine nen *Præcipe quod reddat,*

A.D. 1340–1.

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[1] L., and Harl., J.; the record Ivo.

[2] H. is not in Harl.

[3] The words between brackets are not in L.

[4] T., and Harl., J.

[5] Harl., Lancastre.

[6] The name is from the record. T., L., and Harl., K.

[7] T., L., and Harl., B.

[8] The words between brackets are not in L.

[9] Harl., chef.

[10] T., and L., *R.*

[11] Harl.. qe un, instead of forsqe.

[12] L., qil, instead of qe le Priour.

[13] The words mes sil soit tenu du Roi are not in Harl.

[14] The words au Roi are in T. alone.

[15] Harl., jesqun.

[16] T., and Harl., si.

[17] Harl., par.

[18] The words par ley are not in in Harl.

[19] L., suer; Harl., sire.

A.D. 1340–1. are Ancient Demesne, will the Court do anything until it be informed whether there be such a record or not.—*W. Thorpe.* In the case of Novel Disseisin one is accustomed to try it by assise for the sake of the speedy remedy, unless the whole of a manor be alleged to be Ancient Demesne, and then it is necessary to try it by Domesday; and in a *Præcipe quod reddat* one can be at issue on that as well as on any other record. —*Pole* denied this.—HEPPESCOTES. In the case which W. Thorpe puts it is, perhaps, true that the issue between the parties will not be on the allegation of this record, because it is only to the jurisdiction of the Court; but in this case the plea is to the action; for the stress is not whether the manor is Ancient Demesne or not, but whether the manor is holden of the King or not, and to prove this he alleges the record.—*Blaik.* By the manner of this plea it will be held to be not denied that there is such a record.—And then *Thorpe* produced the record of Domesday,[1] which purported that the Bishop of London held the manor of Wydeford, and answered for three hides, &c., and also another record that the Bishop was in a title, in which those who held of the King are named; and so (said he) the manor is holden of the King. And, besides, the Prior has done fealty to the King in the Chancery before the writ of *amoveas manum* issued to the Escheator.—*Pole.* That fealty does not prove it, for he held other lands of the King, by reason of which the King by his prerogative

[1] According to the roll, it was a certified extract that was produced.

si allegge soit qe les tenements sont anciene demene, Court ne fra rien taunqe ele soit apris si tiel recorde y eit ou noun.—*W. Thorpe.* En assise de novele disseisine homme le use trier par assise [1] pur hastive remedie, sil ne soit qe tout un manere soit allegge estre [2] anciene demene, et donqes il bosoigne qil soit trie pur Domesday; [3] et en *Præcipe quod reddat* homme poet estre a issu sur ceo come sur [4] autre recorde.—*Pole hoc dedixit.*—HEP.[5] En le cas qe W. Thorpe met il est issi, par cas, qe issu entre parties ne se fra pas sur alleggeance de cel recorde pur ceo qe cest forsqe a jurisdiccion de Court; mes en ceo [6] cas le plee est al accion, qar ceo nest pas la force [7] le quel le manere est [8] anciene demene ou noun, mes est le quel lemanere est tenu [9] du Roi ou noun, et pur cel chose prover il alegge le recorde.—*Blaik.*[10] Par manere de ceo plee homme tendra [11] nient dedit qil y ad tiel recorde.—Et puis *Thorpe* mist avant recorde de Domesday,[12] qe voleit qe Levesqe de Loundres tient le manoir de Wydeford,[13] et respody [14] pur trois hydes, &c., et auxi un autre recorde [15] qe Levesqe fust deinz un title deinz quele ceux qe tenent [16] du Roi sont nomes; issi est le manere tenu du Roi. Et, ovesqe ceo, il ad fait fealte [17] au Roi en la Chauncellerie devant qe bref issit a leschetour doster [18] la main.[19]—*Pole.* Cestui [20] fealte [17] ne prove pas, qar il tient autres terres du Roi, par resoun de quels le Roi par sa preroga- A.D. 1340–1.

[1] The words trier par assise are in T. alone.
[2] estre is not in Harl.
[3] Harl., Dounsdaie.
[4] sur is not in Harl.
[5] Harl., *Th.*
[6] Harl., se.
[7] Harl., fors.
[8] L., soit.
[9] T., il tenent, instead of le manere est tenu.
[10] T., BAUK.; Harl., *Blayk.*
[11] T., entendra.
[12] Harl., Dounsdai, instead of record de Domesday.
[13] T., L., and Harl., B.
[14] T., rendi.
[15] recorde is in T. alone.
[16] Harl., tiegnent.
[17] T., feaute.
[18] L., douster; Harl., de hoster.
[19] Harl., main le Roi.
[20] L., ceo; Harl., ce.

A.D. 1340–1. has cause to have the custody of the Priory in time of vacancy; and office by a *Diem clausit extremum* cannot be had in such case; wherefore the fealty can be understood only to be for the lands which are holden of the King. (And to this the COURT agreed.) And as to the record we tell you that this manor [of Wydeford] was in the seisin of R. Mellent, Earl of Leicester, as parcel of such an honour,[1] who gave that manor,[2] to be holden of him, &c., in frankalmoign to the predecessor of this Prior; afterwards Simon de Montfort, Earl of Leicester, levied war; wherefore the honour came into the hand of King Henry III., who gave to his son Edmund the whole of the honour as fully as it came into his hand by the forfeiture of Simon de Montfort, of which honour the services were parcel. (And he showed deeds, &c.) And so the manor is holden of the Earl of Leicester [3] and not of the King; ready, &c.—*W. Thorpe.* Heretofore you offered a general averment; judgment whether you shall be admitted to change your plea.—*Pole.* We do it on your compulsion.—*W. Thorpe.* But you might have so pleaded at the commencement. — HILLARY. That would have been more certain; for if we had been sure that the record might have been held as not denied, we would have ousted

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[1] "ut parcella honoris Legercestriæ et Wares, qui nunc est "unus honor de Leycestria," according to the record.

[2] in exchange for the manor of Andredesbury, according to the record.

[3] *i.e.*, of Henry, Earl of Leicester, brother of Thomas, the son of Edmund, who was son of Henry III.

tive ad cause daver la garde de la Priorie en temps vacant; et office par *diem clausit extremum* ne poet estre fait en tiel cas; par quei la fealte[1] ne poet estre entendu forsqe pur les terres qe sont tenuz du Roi. (Et a ceo sacorda[2] la COURT.) Et qant al recorde nous vous dioms qe ceo manere fust en la seisine R.[3] Millum, Count de Leycestre, come parcele dun tiel honour,[4] le quel dona cel manere,[5] a tenir de lui, &c., en fraunk almoigne, al predecessour cestui[6] Priour; puis le Counte de Leycestre, Symond de Mounford,[7] leva de gwere;[8] par quei lonour vient en la mayn le Roi H., le quel dona a E., son fitz, tout lonour [si pleinement come ceo vient en sa mayn par le forfaiture Symond de Mounford][9] de[10] quei les services furent parcele.[11] (Et moustra fetz, &c.) Et issi est le manere tenu du Counte de Leycestre[12] et noun pas du Roi; prest, &c.—[*W. Thorpe.* Avant ses houres tendistes averement general; jugement si vous serrez resceu de changer vostre plee.—*Pole.* Nous ne le fesoms par vostre chace.][13]—*W. Thorpe.* Mes vous[14] le puissez[15] aver fait al comencement.—HILL. Ceo ust este pluis[16] certein; qar, si nous ussoms este en certein qe le record poait aver este tenu[17] a nient dedit, nous les[18] ussoms[19] ouste par agard del avere- A.D. 1340–1.

[1] T., feaute.

[2] Harl., ce acorda, instead of ceo sacorda.

[3] T., and L., J.; Harl., un J.

[4] Harl., hondr.

[5] Harl., cele parcele, instead of cel manere.

[6] L., mesme celuy.

[7] L., de Mountforth; Harl., M., instead of de Leycestre Symond de Mounford.

[8] T., de gerre; Harl., la gere, instead of de gwere.

[9] The words between brackets are in T. alone.

[10] Harl., par.

[11] T., fait parcele.

[12] L., and Harl., Lancastre.

[13] The words between brackets are not in L.

[14] Harl., vo.

[15] Harl., puset.

[16] Harl., ce est, instead of ceo ust este pluis.

[17] tenu is not in Harl.

[18] L., ne; Harl., le.

[19] L., ussoms pas.

A.D. 1340–1. them by judgment from the general averment without cause, and now we are informed on that point.—*R. Thorpe.* We do not understand that.—*W. Thorpe.* Not waiving our first plea, but in order to move you, we tell you that their statement does not prove that the land is not holden of the King; for it is not denied by them that Ivo de Grentemisiel held the manor of the King, and aliened, which alienation must have been to hold the manor of the King, so that when the Earl was seised he could not hold it as parcel of the honour, and, when he aliened, the services reserved could not be parcel of the honour any more than the demesne. Besides, when the King gives an honour, unless express mention be made of fees and advowsons, they do not pass.—*Pole.* What you say is contrary to law; for, when the King gives an honour or a manor with the appurtenances as fully as it came into his hands by the forfeiture of such an one, everything which is appendant passes; and in that way the gift was made. And as to your statement that, when Ivo, who held of the King, aliened, that alienation must have been to hold of the King, it is not so; for at that time he could aliene to hold of himself; for even as alienation was then permissible without the King's license, so it was then permissible that it should be to hold of himself.—*W. Thorpe.* That does not follow. Besides, when the manor was holden of the King in frankalmoign through the forfeiture of that Montfort, the King could not divest himself of these services.—

ment general sanz cause, et ore[1] sumes apris de cel point. — *R. Thorpe.* Ceo nentendoms nous pas. — *W. Thorpe.* Nient weyvant[2] nostre primer plee, mes pur vous mover, vous dioms qe lour dit ne prove pas qe la terre nest pas tenu[3] du Roi; qar il nest pas dedit deux[4] qe Eve Greintemisiel tient le manoir du Roi, et aliena, quele alienacion covient estre a tenir le manere[5] du Roi, issint qe quant le Counte fuit seisi il nel pout tenir come parcele del honour, et, qant il aliena, les services reserves ne poaint pluis estre parcele del honour qe ne fust le demene. Ovesqe ceo, [qant le Roi doune un honour, si expresse mencion ne soit pas fait des feez et avowesons, ils ne passent pas.—*Pole.* Vous parlez contre ley; qar],[6] quant le Roi doune honour ou manere ove les apurtenantz auxi pleinement come il vient en sa mayn par forfaiture un tiel, tout qest apendant passe; [et par cele manere fust le doun fait].[7] Et a ceo qe vous dites qe qant Eve aliena, qe tient de Roi,[8] cele alienacion convensit estre a tenir du Roi, il nest pas issi; qar adonqes il[9] poet aliener a tenir de lui mesmes; qar auxi bien come lalienacion fust suffrable[10] adonqes sanz conge du Roi, auxi fust ceo suffrable qe ceo serreit a tenir de lui mesme. — *W. Thorpe. Non sequitur.* Ovesqe ceo, qant le manere fust tenu du Roi[11] en frank almoigne par la forfaiture celui[12] Mounford,[13] le Roi de ceux services ne se poet

A.D. 1340–1.

[1] ore is in Harl. alone.
[2] Harl., veyvant.
[3] Harl., &c. tenuz, instead of qe la terre nest pas tenu.
[4] Harl., de eux.
[5] The words le manere are in L. alone.
[6] The words between brackets are not in L.
[7] The words between brackets are not in Harl.
[8] The words qe tient du Roi are not in Harl.
[9] T., ele.
[10] The words fust suffrable are not in L.
[11] The words du Roi are in T. alone.
[12] celui is not in Harl.
[13] L., Mountefort.

A.D. 1340–1. *Pole.* We are a stranger to the record ; judgment whether it shall oust us from the averment.—HEPPESCOTES. You will be barred by non-claim on a fine, to which fine you are a stranger.—*Pole.* That is by Statute.[1]—This was denied.—And they were adjourned.[2]

Judgment [in Replevin]. (37.) § BASSET.—Inasmuch as you (the plaintiff) have acknowledged the entail, and the purchase of the demesne from the issue in tail cannot extinguish the seignory, and the defendant cannot recover by Formedon the homage for which he has avowed, nor by any other way than by distress, therefore sue you (the defendant) a Return, and let R. be in mercy.

Replevin. (38.) § John de Ralegh brought his Replevin against Theobald de Trimnell, who avowed, &c., for the reason that one Henry de T. granted to the said Theobald an annual rent of 40*l.* to take from his manor of T., at certain terms, so that, if the rent should be in arrear, it should be quite lawful for Theobald to distrain in that manor and in the manor of B. ; and for so much in arrear, &c.—*Stouford.* As to the manors, except so much land of one manor, a fine was levied between one B. and Amy his wife and this Henry, by reason of whose deed you avow, in which fine B. and Amy acknowledged &c. to be the right of Henry as &c., for which acknowledgment Henry granted and rendered to B. and Amy his wife for their lives, the remainder over to certain persons. Henry is dead ;

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[1] 18 Edw. I., St. 4 (*Modus levandi fines*).

[2] After several adjournments, the defendant failed to appear, and judgment was given for the King, as appears on the roll.

demettre.—*Pole.* Nous sumes estrange al record; jugement sil nous oustra[1] del averement.—Hep. Vous serrez barre par noun cleyme dune[2] fyne, a quel fine[3] vous estes estrange.—*Pole.* Cest par estatut. *Quod negatur.—Et adjournantur.*[4] A.D. 1340–1.

(37.)[5] § Bass.—Pur ceo qe vous avez conu la taille, et le purchas del demene del issu en la taille ne poet la seignurie esteindre, et il ne poet recoverir par forme doun homage pur quel il ad avowe, ne par autre voie forsqe par destresse, par quey suez retourn, et R. en la mercie. Judicium.

(38.)[6] § Johan de Ralegh[7] porta son[8] *Replegiari* devers Thebaud[9] de Trimnill,[10] qe[11] avowa &c.,[12] par la resoun qun Henre de T. granta al dit Thebaud[9] un annuelle[13] rente de xl. *li.* a prendre de soun manere de T., a certeinz termez, issint qe, si la rente fuit arere, bien luy lirreit[14] destreindre[15] en cel manere et en le manere de B.; et pur tant arere, &c.—*Stouff.* Quant a les manerez, forpris tant de terre de lun manere, fyn se leva[16] entre un B. et Amie[17] sa femme et celuy Henre, par qi fait vous avowez, ou B. et Amy[18] coniserent &c., estre le dreit Henre com &c., pur quele conisance[19] Henre granta et rendi a B. et Amy[17] sa feme[20] a lour vies, pus le remeindre a certeinz per- Replegiari. [Fitz. *Double Plee*, 22.]

[1] T., ouste; Harl., oste.
[2] Harl., de la.
[3] fine is in T. alone.
[4] The words *Et adjournantur* are in Harl. alone.
[5] From T. alone.
[6] From L., and Harl. 741. In the last mentioned MS. the report appears as of Michaelmas Term, 14 Edw. III., but there is in the same MS. an abridgment of it under the head of Hilary Term, 15 Edw. III. The case may, however, be that which appears in T. as No. 83 of M., 14 E. III.
[7] Harl., Raley.
[8] son is not in Harl.
[9] L., Tebaud.
[10] L., Gerniville.
[11] Harl., qi.
[12] Harl., qe.
[13] Harl., anuel.
[14] Harl., list a ly, instead of luy lirreit.
[15] L., a destreindre.
[16] L., leveit.
[17] L., A.
[18] L., Amy; Harl., W. et Amy, instead of B. et Amy.
[19] Harl., reconisance.
[20] The words sa feme are not in Harl.

A.D. 1340–1. J. de Ralegh, the plaintiff, has married the said Amy; judgment whether you can avow in these tenements by reason of Henry's deed. As to the part excepted you cannot avow, for you have released to us and to Amy our wife all the right that you had in that part excepted; judgment whether you can avow in that parcel. —Hillary. It is necessary to know whether the taking was effected in the lands comprised in the fine or in the lands comprised in the release.—*Stouford.* In both.—*Thorpe.* Whereas you would charge us to answer to the two pleas because the taking was effected in both lands, we are ready to aver that it was not.—*Blaik.* Then you must say with certainty in which of the two lands the taking was effected in order to plead afterwards in discharge of that parcel. — *Ham.* (*ad idem*). Since we are at one as to the place, and we plead in discharge respectively by divers pleas, whereof one plea extends to discharge one parcel, one plea extends to another parcel, it is necessary to answer to both.—*Thorpe.* The issue in this plea ought to be on the taking —whether it was tortious or rightful; therefore in respect of that parcel in which the taking was effected ought the issue to be taken; and as to the other parcel protestation may be made in order to save the plea if at another time it should happen that another taking should be effected.

Scire facias where aid- (39.) § In a *Scire facias* on a fine *Ham.* said:—As to part, we hold it, for term of our life, by lease from one

sones.[1] Henre est mort; J. de Ralegh,[2] qe se pleint, ad espose la dit Amye; jugement se par le fait Henre en ceux tenementz puissez avower. Quant[3] a la forprise[4] vous ne poiez avower, qar vous avez relesse a nous et a Amye nostre feme tot le dreit qe vous avez en cele forprise;[4] jugement si en cele parcele puissez avower.—HILL. Il covient saver le quele la prise se fist en les terres compris en la fyn ou les terres compriz en le relees—*Stouf.* En lune et en lautre.—*Thorpe.* La ou vous nous voillez charger de[5] respondre a les ij. plees par cause qe la prise se fist en lune terre et en lautre, prest daverer[6] qe noun. —*Blaik.* Donqes covient qe vous diez en certein en quel des deux terres la prise se fist a pledre apres en descharge de cele parcele.—*Ham.* (*ad idem*). De puis qe nous sumes a un del[7] lieu,[8] et[9] nous pledoms en descharge en le dreit par divers pleez, dont un plee sestend a descharger un parcele, un ple[10] se estend[11] a autre parcele, il covient respondre a lun et a lautre. —*Thorpe.* Le issue de ceo plee covient estre sur la prise—le quel ele fut torcenouse ou dreiturele; par quei de cele parcele ou la prise fuit fait covient le issue estre prise; et quant al autre parcele poet homme faire[12] protestacion pur sauver[13] le[14] plee [si] autrefoitz avenist qe altre prise fu[15] fait.[16] A.D. 1340-1.

(39.)[17] § En un[19] *Scire facias* dune fyn, *Ham.* Quant a partie, nous la tenoms, a terme de nostre vie, *Scire facias*, ou[18] eide priere

[1] L., temps.
[2] Harl., Raly.
[3] L., quantqe.
[4] Harl., forpris.
[5] Harl., a, instead of charger de.
[6] L., &c.
[7] L., de.
[8] Harl., lu.
[9] et is not in L.
[10] L., et ou lautre, instead of un ple.
[11] L., sestendra, instead of se estend.
[12] Harl., fer.
[13] L., saver.
[14] le is not in Harl.
[15] fu is not in Harl.
[16] Harl., fet.
[17] From L., and Harl. 741.
[18] The words following *Scire facias* are not in L.
[19] un is not in Harl.

A.D. 1340-1.

A., the reversion belonging to him; and one Maud held the residue of the said A. in dower, and she leased her estate to us; and we pray aid of the said A.—*R. Thorpe.* Neither aid-prayer, nor voucher, nor other delays lie in a *Scire facias;* wherefore, &c.—HILLARY. Aid-prayer is not like voucher.—*R. Thorpe.* They themselves prove that the woman is still tenant in dower by law, and against her a writ of Waste and a writ of *Quid juris clamat* lie.—Nevertheless the aid was granted by the COURT in respect of the whole.

prayer was granted in respect of a lease made by tenant in dower, and in respect of a lease made by a stranger. M. 19 agrees

Quare impedit.

(40.) § The King brought his *Quare impedit* against Robert Bishop of Salisbury, for that tortiously he did not permit the King to present to the prebend of B. in the church &c., which belongs to the King by reason of the Bishopric of Salisbury being lately in the King's hand.—*R. Thorpe.* The form of the writ shall be "by reason of the temporalities of the "Bishopric, &c."—And the exception was not allowed. —*R. Thorpe.* Whereas you have supposed by your count that the temporalities came into the hand of the King through the death of one E., lately Bishop, and that in the time of that vacancy the prebend was vacant, we say that, while the temporalities were in the King's hand, through the death of the said Bishop, the prebend was not vacant, &c.

Fine.

(41.) § Henry Fitz-Roger acknowledged the manor contained in the writ to be the right of Maud de Holland, whereof she had two parts by his gift, and

del lees un A., la[1] reversion a luy regardant; et le remenant tint une Maude del[2] dit A. en dower,[3] la quele nous lessa son estat; et prioms[4] eide del[2] dit A.—*R. Thorpe.* Eide prier, ne voucher, ne autres delaies ne gisent pas en un[5] *Scire facias;* par quei, &c.—HILL. Eide prier nest pas semblable a voucher. —*R. Thorpe.* Il provent[6] mesmes qe[7] la feme est unquore tenant en douwer par ley[8] vers quel bref de Wast gist et *Quid juris clamat.* — *Tamen* leide fuit grante par la COURT de lenter. A.D. 1340–1. fugrante de les fet par tenant en dower, et de lez fet par un estrange. Concordat M. 19.

(40.)[9] § Le Roi porta son *Quare impedit* vers Robert Evesqe[10] de Salope de ceo[11] qe atort ne luy seoffre presenter, &c., a la provendre de B., en leglise &c., que a luy appent, par la resoun del Evesqe de Salope nadgers[12] en sa main esteaunt, &c.—*R. Thorpe.* La fourme del bref serra *ratione temporalium Episcopatus, &c.—Et non allocatur.—R. Thorpe.* La ou vous avez suppose par[13] counte que les temporaltes devindrent[14] en la mayn le Roy par la mort un E.,[15] nadgeres[16] Evesqe, et qe en temps de cel vacacion la provendre fuit voyde, la dioms nous qe, les temporaltes esteauntz en la mayn le Roy, par la mort le dit Evesqe, la provendre ne fuit pas voide, &c. Quare impedit. [Fitz. *Briefe*, 679.]

(41.)[17] § Henre fitz Roger conust la manere contenu en le[19] bref estre le dreit Maude de Holaund,[20] dount ele ad les[21] ij. parties de soun doun, et granta Fyn.[18] [Fitz. *Fynes*, 48.]

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[1] la is not in Harl.
[2] Harl., du.
[3] L., douwer.
[4] L., pria.
[5] un is not in Harl.
[6] L., pernent.
[7] qe is not in L.
[8] L., luy.
[9] From L., and Harl. 741, in which latter MS. the case occurs again, slightly abridged.
[10] L., Levesqe, instead of Robert Evesqe.
[11] L., si.
[12] L., negeres.
[13] The words suppose par are not in Harl.
[14] L., devayndrent.
[15] Harl., T.
[16] Harl., jadis.
[17] From L., and Harl. 741.
[18] Harl., Finis.
[19] Harl., el, instead of en le.
[20] Harl., Holond.
[21] L., leez.

A.D. 1340–1. granted that the third part, which one Hugh Spenser held for the life of Alice, who was the wife of B., who held it in dower, of the inheritance of the said Henry, and which third part was to revert to him, should remain to Maud, and to her heirs. And this fine was accepted. This was strange with regard to the third part.

Assise of common of pasture. (42.) § In assise of common of pasture before SIR RICHARD DE WILLOUGHBY, in the county of Lincoln, the plaint was to common in certain lands, with a certain number of beasts. And the plaintiff showed a deed which purported that the common was granted within the metes and bounds of the common of such a vill. It was found by the Assise that the person who granted the common held all his lands in the same vill in severalty, and that the plaintiff was seised. Upon this difficulty the parties were adjourned into the Bench. — *Thorpe.* It is found that we were seised of the common in a certain place through his deed. Although this place be several, that proves the charge good; for if the person who granted had only common in this place, then he could not have charged it.—HILLARY. But if there was one place which was his several, and another place which was common to others, that place which is common shall alone be charged; then it appears that this land which is his several is not charged.

Statute Merchant. (43.) § To a writ on a Statute Merchant the Sheriff returned that the debtor was dead, wherefore execution was awarded against the lands of the debtor. The tenant who was ousted by execution came into Chancery and showed an indenture in defeasance

qe la tierce[1] partie,[2] la quel un Hugh Spenser tient a la vie Alice, qe fuit le femme B., qe ceo tient en dower, del heritage la dit H., et la quele tierce[1] partie a luy doit revertir, remeindreit a Maude, et a ses heirs. Et[3] cest fyn fuist accepte, *quod mirum fuit*, de la tierce partie. A.D. 1340–1.

(42.)[4] § En[5] assise de comune de[6] pasture devant SIRE RICHARD DE WILUGHBY,[7] en la counte de Nicole, la pleinte fut a comuner en certeinz terres, ov certein noumbre des bestez. Et moustra fait qe voileit qe la comune fut grante *infra metas et bundas* de comune de tiele ville. Trove fuit par assise qe celuy qe granta la comune tynt toutes ses terrez en mesme la ville en severalte, et qe le pleintif fut seisi. Sur ceste difficulte les partiez furent ajournes en Bank.—*Thorpe.* Trove est qe nous fumes[8] seisi de la comune par son fait en certein place. Coment qe cel[9] place soit several, ceo prove la charge bone; qar si[10] celuy qe granta navoit force comune en cele place, donqes nel[11] put il aver charge. HILLAR. Mes[12] sil y avoit un place qe fuit son several, et autre place qe fut comune as autres, cel place[13] qe est comune serra soulement charge; donqes pert il qe cel[14] terre qe est son several nest pas charge, &c. Assise de comune de pasture. [14 Li. Ass. 21; Fitz. *Comen*, 12.]

(43.)[15] § En un[16] bref sour statut marchand le Vicounte retourna qe le dettor fuit[17] mort, par quei execucion fut[18] agarde des terres le dettour. Le tenant qe fuit ouste par execucion vynt en Chauncellerie et Statut Marchand. [Fitz. *Execucion*, 59; *Respond*, 1.]

[1] L., tercie.
[2] partie is not in L.
[3] Et is not in Harl.
[4] From L., and Harl. 741.
[5] En is not in L.
[6] de is not in Harl.
[7] Harl., WILBY.
[8] Harl., sumes.
[9] L., ceo.
[10] si is not in L.
[11] L. ne.
[12] Mes is not in Harl.
[13] L., ceo, instead of cel place.
[14] L., ceo.
[15] From L., and Harl. 741.
[16] un is not in Harl.
[17] L., est.
[18] fut is not in L.

A.D. 1340-1. of the statute on certain conditions, and had a writ to the Justices that, those being called who ought to be called, they should do right. The party suing [the writ] said that the person who had execution had aliened; therefore, a writ was granted to cause to come the person who had execution, and his assignee. The creditor came and his assignee made default; therefore the Distress issued, and *Idem dies* was given. At the return of the Distress the assignee made default—*R. Thorpe.* We pray that the creditor may be put to answer as to the deed, inasmuch as the tenant who makes default is a stranger to the deed.—HILLARY. Why have you taken your suit against him? And it may be that he has a release. —Therefore, the Distress was awarded against the assignee, and *Idem dies* given to the creditor, &c.

Dower. (44.) § Upon a writ of Dower *unde nihil habet*, against A. and B., his wife, the husband said that he held parcel in severalty, and held parcel jointly with his wife; judgment of the writ.—*Blaik.* With regard to the parcel which you hold jointly you have affirmed the writ to be good, and, therefore, you must answer as to that; for, in the case of a writ in which the demand is not comprised in the writ, neither several tenancy nor non-tenure abates the writ, or the demand, except as to the particular parcel.—As to another *Præcipe* the demand was for the third part of twelve messuages and 40*s.* of rent.—*R. Thorpe.* The rent is issuing from the same messuages; judgment of the demand.—*Blaik.* Not from those messuages, but from other tenements.—But it seems that, even though the rent were issuing from the same messuages, he would be put to answer as to the messuages, even though the demand were abated with respect to the rent.—

moustra endenture en defesaunce del estatut sour certeins condicions, et avoit bref as Justices qe, apelles ceux qe furent a appelers, feisent[1] dreit. Le partie suaunt dit qe celuy qe avoit execucion avoit aliene; par quei bref fut grante a faire[2] venir celuy qe avoit execucion et soun assigne. Le creaunceour vynt, et son assigne fist defaute; par quei la destresse issit, et *idem dies* doune. A la destresse retourne il fit defaute.—*R. Thorpe.* Nous prioms qe le creannceour soit mys a[3] respondre al fait, de sicom le tenant qe fait defaute est estrange al fait.—Hill. Pur quei avez pris vostre suyte vers luy? Et put estre qil ad releese. —Par quei la destresse fut agarde vers lassigne,[4] et *idem dies* done al creanceour. A.D. 1340-1.

(44.)[5] § En un bref de[6] Dower *unde nihil habet*, vers A. et B., sa femme, le baron dit qil tint parcel en severalte, et parcel tint il joint ove sa femme; jugement de bref.—*Blaike.* De la parcel quel vous tenez joynt avez afferme le bref bon, par quei il covient respondre de cel; qar, en bref ou la demande nest pas compris en le bref, la[7] severale tenance ne[8] nountenue ne abate pas le bref, ne la demande, fors quant a la[9] parcel.—Quant a[10] autre *Præcipe* la demande fuit de tierce partie de xij. mies et xl.*s.* de rente.—*R. Thorpe.* La rente est issaunt de mesmes les mies; jugement de la demande.—*Blaik.* Nynt de ceux mies, mes de autres tenementz.—Mes il semble, tut fut[11] le rente issant de mesmes les mies, quil serra mys a respondre des mies, tot fuit[12] la demande abatu en Dower. [Fitz. *Dowere*, 66.]

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[1] L., fesoient.
[2] Harl., fer.
[3] L., de.
[4] L., luy.
[5] From L., and Harl. 741.
[6] The words un bref de are not in Harl.
[7] The words bref la are not L.
[8] L., et.
[9] la is not in L.
[10] L., al.
[11] fut is not in L.
[12] fuit is not in Harl.

A.D. 1340–1. *Quære* whether she can abridge her demand after exception taken.

Formedon. (45.)[1] § Upon a writ of Formedon in the Descender, brought in the Bishopric of Durham, the tenant pleaded in bar the warranty of the ancestor, and said further that the demandant had assets by descent in the county of York, and in the county of Lincoln. The demandant said that he had nothing by descent; therefore the Justices put the parol without day. The demandant caused the record to come before the Bishop, and assigned error, inasmuch as the Justices had put the parol without day, whereas they ought to have continued it until the parol had been removed. Therefore the Bishop redressed that error, and sent the same record to the same Justices to continue process until the parol should be removed, which Justices continued the parol until the King's writ came to the Bishop to record the parol, and send the record into the Common Bench. The Bishop sent the record into the Common Bench of the King.—*Thorpe* delivered to the Justices of the Bench the King's writ to the effect that, if error there were in the record, they should surcease, and should not make any process, and he said that inasmuch as the Bishop sent back the record to the same Justices that had committed error the Bishop had thereby erred. Therefore, said *Thorpe*, we pray that you make no process on this record.—*Blaik.* When a record is caused to come before the King, and error is found, he can send the record to whatsoever Justices he pleases to make an end of the business.—*Thorpe.* The record which has once come into the King's Bench shall never be sent to a lower

[1] See No. 50 of Mich., 14 Edw. III.

dreit de la rente.—*Quære* si ele[1] put abregger sa demande apres chalenge. A.D. 1340–1.

(45.)[2] § En un[3] bref de forme de doun en le[4] descender, porte en Leveche[5] de Duresme, le tenant pleda en barre par garrantie launcestre, et dit outre qe le demandant ount assetz par descente en le counte Deverwik, et en le[6] counte de Nichole. Le demandant dit qil navoit rien par descente; par quei les Justices mystrent le paroule sanz jour. Le demandant fist venir le record devant Levesqe, et assigna errour en tant qe les Justices mistrent la paroule sanz jour, la ou le dussent aver continue tanqe la paroule ust este remue; par quei Levesqe redresea cel error, et maunda mesme le recorde a mesmes les Justices pur continuer[7] le proces tanqe la paroule fuit remue, les quex Justices continuerent la paroule tanqe le bref le Roy vint al Evesqe pur recorder la paroule, et maunder le record en comune Baunk. Levesqe maunda le record en comune Baunk le Roy.—*Thorpe* bailla bref le Roy as Justices del Baunk qe [voleit qe si errour fuit el record qil surseisent, et ne feissent nul proces, et dit qen tant com le Evesqe][8] remaunda le recorde arere a mesmes les Justices qe avoeint erre, Levesqe en tant erra, par quei nous prioms qe vous ne facez nul proces sour ceo record.—*Blaik.* Quant le record est fait venir devant le Roy, et errour soit trove, il put maunder le record a quel Justice qil voudra pur faire fyn de la bosoigne.—*Thorpe.* Le record qe vint une foit en Baunk le Roy ne serra jammes maunde en place Forme de doun. [Fitz. *Recorde*, 37.]

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[1] L., sele, instead of si ele.
[2] From L., and Harl. 741.
[3] un is not in Harl.
[4] le is not in Harl.
[5] Harl., la Evesche.
[6] L., el, instead of en le.
[7] Harl., continuer avant.
[8] The words between brackets are not in L.

A.D. 1340–1.

Court.—And nevertheless HILLARY adjudged continuation of process to try the issue.—And this was strange.

Forfeiture of marriage, in which the heir was admitted to say that he held of another by priority without saying that the other was seised of the wardship.

(46.) § Upon a writ of Forfeiture of Marriage the defendant said that he and his ancestors held of another lord by priority of feoffment, and that he had made satisfaction to the latter. — The plaintiff said that the defendant and his ancestors held of him by priority.—The other side said the contrary. — But it was strange that such an answer was admitted for the heir as that he held of another by priority without saying that the other was seised of the wardship of his body.

Appeal.

(47.) § In an appeal of homicide the appellor was nonsuited after the appeal was formed. Afterwards the appellee was acquitted on the suit of the King, and the damages were assessed at twenty marks, and it was found that the appellor was sufficient. — *Redenesse* prayed a writ to take the body of the appellor.—SCARDEBURGH. We find by record that he has made a fine for the nonsuit, and that which has been found is office against him.—*Redenesse.* The Statute [1] is to the effect that he have imprisonment for one year, &c.

Note: Cognisance of pleas in a liberty demanded.

(48.) § Upon a writ on which cognisance of pleas by a liberty was demanded and granted the tenant came afterwards into the Bench and said that the bailiffs who held the Court had failed in justice towards him, and prayed a resummons.—And it was asked by the COURT in what point they had failed in justice towards him.—And he stated it with certainty. — And he had the resummons.

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[1] 13 Edw. I. (Westm. 2), c. 12.

plus basse.[1]—*Et tamen* HILL. agarda proces avant de trier lissue; *quod mirum fuit.* A.D. 1340–1.

(46.)[2] § En un[3] bref de forfaiture de mariage le defendant dit qe luy et ces auncestres[5] tyndrent dun autre seignur[6] par priorite, a qi il avoit fait gree.—I.e pleintif dit qe le defendant et ses auncestres tyndrent par priorite.—*Alii e contra.*—*Quod mirum fuit* qe tiel respons fuit resceu par leir[7] qil[8] tynt de autre par[9] priorite, saunz dire qe[10] lautre fuit seisi[11] de la garde de soun corps. Forfaiture de mariage, ou leir fut resceu a dire qe il tint de un autre par priorite saunz dire qe lautre fut seisi de la Garde.[4]

(47.)[12] § En un[13] appel de mort de homme lappellour fuit nounsuy apres lappel fourme. Puis lappelle fuit acquite a la suyte le Roi, et les damages furent taxes a xx. marcs, et fuit trove qe lappellour fuit sufficiant.—*Redenesse* pria bref de prendre le corps lappellour.—SCARB. Nous trovoms par recorde qil ad fait fyn pur la nounsuyte, et quant qest trove est office vers luy.—*Redenesse.* Lestatut volt qil eit prisoun dun an, &c. Appel.

(48.)[14] § En bref ou fraunchise fuit demande et grante puis vient le tenant en Baunk et dit qe les baillifs qe tiendrent la Court luy avoint failli de dreit, et pria resomons.—Et fuit demande par[15] COURT en quel poynt[16] il luy[17] avoit failli de dreit.—*Et dixit in certo.*—*Et habuit.* Nota: Fraunchise demande.

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[1] The report ends here in Harl. 741.

[2] From L., and Harl. 741, but see No. 74 of M., 14 Edw. III.

[3] un is not in Harl.

[4] The words following mariage are in Harl. alone.

[5] L., soun auncestre, instead of ces auncestres.

[6] Harl., seignure.

[7] L., lier.

[8] L., quel.

[9] Harl., dautri, instead of de autre par.

[10] qe is not in L.

[11] seisi is not in L.

[12] From L., and Harl. 741.

[13] un is not in Harl.

[14] From L., and Harl. 741.

[15] Harl., de.

[16] Harl., pas.

[17] luy is not in Harl.

A.D. 1340–1. Wardship.

(49.) § Upon a writ of Wardship of the body and of the lands non-tenure was alleged, as to the body, in abatement of the whole writ. — The exception was not allowed.—Therefore the defendant answered as to the land.—Nevertheless by the exception he gave the other party a writ of another form.

(49.)[1] § En bref de garde de corps et des terres nountenue fut allegge du corps en abatement de tut le bref. — *Non allocatur.* — Par quei il respondi de la terre.—*Tamen* par la excepcion il ly dona bref dautre forme. A.D. 1340–1. Garde. [Fitz. *Briefe*, 680.]

[1] From Harl. 741, alone. Compare No. 27 next above.

APPENDIX.

APPENDIX.

The Case No. 33 in Hilary Term, 15 Edward III.

The King's *breve clausum* (writ of error) dated 1 June, 14 Edward III., was sent to Simon Fitz-Richard, returnable in the King's Bench in England on the Octave of St. Michael.

The proceedings in the first instance at Dublin, and the subsequent proceedings in Error in the Court of King's Bench in England appear among the *Placita coram Rege*, Hilary, 15 Edward III. R°. 117, in the following form:—

"Placita apud Dublinum coram Simone Fitz Richard et sociis suis Justiciariis de Banco Dublini a die Sancti Johannis Baptistæ in xv. dies anno regni Regis Edwardi tertii post Conquestum undecimo.

Jacobus le Botiller Comes Ermoniæ et Magister Lucas de Loundres summoniti fuerunt quod essent hic ad respondendum domino Regi de placito quod permittant dominum Regem præsentare idoneam personam ad ecclesiam de Cnokgraffan, quæ vacat, et ad domini Regis spectat donationem, ratione minoris ætatis heredum Johannis de Bermyngham nuper Comitis Loueth in manu domini Regis existentis,[1] ut dicitur, et unde iidem Comes et Lucas dominum Regem injuste impediunt.

Et unde Thomas de Westham qui sequitur pro domino Rege dicit quod quidam Petrus de Bermyngham nuper seisitus fuit de manerio de Esker cum pertinentiis et illud tenuit de domino Edwardo nuper Rege Angliæ avo domini Regis nunc in capite, et etiam tenuit manerium de Cnokgraffan cum pertinentiis, ad quod advocatio ecclesiæ prædictæ est appendens, et inde seisitus fuit in dominico suo ut de feodo et jure, tempore pacis, tempore prædicti domini Edwardi avi domini Regis nunc, capiendo inde expletia, &c., ad valentiam, &c., et tempore ejusdem Regis Edwardi avi domini Regis nunc præsentavit quendam clericum suum Robertum de Bermyngham ad ecclesiam prædictam, qui, ad præsentationem suam ad ecclesiam prædictam, fuit admissus et per Episcopum loci institutus in eadem, qui quidem Petrus obiit inde seisitus, post cujus mortem prædictus Johannes de Bermyngham nuper

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[1] It was alleged by the plaintiff in Error that this mistake occurred in the original writ.

Comes Loueth intravit in prædicto manerio de Esker cum pertinentiis et in prædicto manerio de Cnokgraffan cum pertinentiis, ad quod advocatio ecclesiæ prædictæ est appendens, ut filius et heres prædicti Petri, qui quidem Johannes nuper Comes Loueth dedit et concessit cuidam Magistro Roberto de Bermyngham advocationem ecclesiæ prædictæ ad totam vitam ipsius Magistri Roberti. Postea ecclesia prædicta per resignationem prædicti Roberti de Bermyngham clerici vacavit, tempore pacis, tempore domini Regis Edwardi patris domini Regis nunc, et eodem tempore prædictus Magister Robertus, ut in jure ipsius Johannis nuper Comitis[1] Loueth, præsentavit quendam clericum suum Johannem de Bermyngham ad ecclesiam prædictam, qui quidem Johannes clericus, ad præsentationem suam, ad ecclesiam prædictam fuit admissus et per Episcopum loci institutus in eadem, qui quidem Comes obiit, et postea obiit prædictus Magister Robertus, post cujus Comitis mortem prædictum manerium de Esker cum pertinentiis et prædictum manerium de Cnokgraffan cum pertinentiis, ad quod advocatio ecclesiæ prædictæ est appendens, seisita fuerunt in manum domini Regis nunc, ratione minoris ætatis Matilldis, Bertredæ, et Katharinæ filiarum et heredum prædicti Comitis in custodia domini Regis nunc existentium, et prædictis manerio de Esker cum pertinentiis, et manerio de Cnokgraffan cum pertinentiis, ad quod advocatio ecclesiæ prædictæ est appendens, sic in manu domini Regis nunc existentibus, prædictus Johannes de Bermyngham clericus obiit, per cujus mortem ecclesia prædicta vacavit, et adhuc vacat, et sic spectat ad dominum Regem præsentare ad ecclesiam prædictam. Et prædicti Jacobus Comes et Magister Lucas ipsum injuste impediunt ad damnum domini Regis mille librarum. Et, si prædicti Jacobus Comes et Magister Lucas hoc velint dedicere, Thomas de Westham, qui sequitur pro domino Rege, paratus est hoc verificare pro domino Rege, &c.

Et prædicti Comes et Magister Lucas, per Martinum Reve attornatum eorum, veniunt et defendunt vim et injuriam ubi et quando, &c. Et prædictus Lucas dicit quod ipse nihil clamat in advocatione ecclesiæ prædictæ nec in ecclesia prædicta nisi ut rector ecclesiæ prædictæ. Et prædictus Jacobus Comes, per prædictum attornatum suum, dicit quod tota Lagenia unde prædictum manerium de Esker cum pertinentiis est parcella nuper fuit in seisina cujusdam Ricardi Comitis Marescalli, &c., qui quidem Ricardus Comes surrexit de guerra contra dominum Johannem nuper Regem Angliæ progenitorem domini Regis nunc, per quod prædictum manerium de Esker

[1] The roll, Comes.

cum pertinentiis et tota Lagenia unde prædictum manerium cum pertinentiis est parcella devenerunt ad manum ipsius domini Regis Johannis per forisfacturam ipsius Ricardi nuper Comitis Marescalli, &c., et ex quo dominus Rex non debet alio modo tenere prædictum manerium de Esker cum pertinentiis, nec ratione illius manerii aliam prærogativam clamare quam prædictus Comes Marescallus seu heredes sui, si manerium illud cum pertinentiis esset in manu ipsius Comitis seu heredum suorum, non intendit quod dominus Rex velit ad talem demonstrationem responderi, &c.

Et prædictus Thomas, qui sequitur pro domino Rege, petit judicium, desicut prædicti Jacobus Comes et Magister Lucas non dedicunt quin prædictus Petrus tenuit prædictum manerium de Esker cum pertinentiis de domino Edwardo nuper Rege Angliæ avo domini Regis nunc in capite, nec quod tenuit prædictum manerium de Cnokgraffan, ad quod advocatio ecclesiæ prædictæ est appendens, nec quod idem præsentavit prædictum clericum suum Robertum de Bermyngham ad ecclesiam prædictam, qui, ad præsentationem suam, ad ecclesiam prædictam fuit admissus, et per Episcopum loci institutus in eadem, nec quod prædictus Johannes nuper Comes Loueth, post mortem ipsius Petri, in prædicto manerio de Esker cum pertinentiis et in prædicto manerio de Cnokgraffan cum pertinentiis, ad quod advocatio ecclesiæ prædictæ est appendens, intravit, ut filius et heres ipsius Petri, &c., nec quod prædictus Magister Robertus, ut in jure ipsius Johannis nuper Comitis Loueth, præsentavit prædictum Johannem de Bermyngham clericum suum ad ecclesiam prædictam, qui, ad præsentationem suam, ad ecclesiam prædictam fuit admissus et per Episcopum loci institutus in eadem, ut prædictum est, nec quod post mortem ipsius Johannis nuper Comitis Loueth prædictum manerium de Esker cum pertinentiis et prædictum manerium de Cnokgraffan cum pertinentiis, ad quod advocatio ecclesiæ prædictæ est appendens, seisita fuerunt in manum domini Regis nunc, ratione minoris ætatis prædictorum heredum ipsius Comitis Loueth, nec quod ecclesia prædicta post mortem prædicti Johannis de Bermyngham clerici, prædicto manerio de Esker cum pertinentiis, et prædicto manerio de Cnokgraffan cum pertinentiis, ad quod advocatio ecclesiæ prædictæ est appendens, in manu domini Regis nunc, ut prædictum est, existentibus, vacabat et adhuc vacat, &c., et petit breve Episcopo, &c.

Et, quia judicium nondum inde formatum est, dies datus est prædicto Thomæ, qui sequitur pro domino Rege, et prædictis Jacobo Comiti et Magistro Lucæ, de judicio suo inde

audiendo hic a die Sancti Michaelis in xv. dies. Postea, continuata loquela prædicta usque in Crastino Sancti Martini proximo futuro, prædictus Thomas, qui sequitur pro domino Rege, venit hic. Et prædicti Comes et Magister Lucas, per prædictum attornatum eorum, similiter veniunt hic. Et, quia judicium nondum inde formatum est, dies datus est partibus prædictis de judicio suo inde audiendo hic in Octabis Sancti Hillarii, &c. Postea in Octabis Sancti Hillarii prædictus Thomas qui sequitur pro domino Rege venit hic, et prædicti Comes et Magister Lucas, per prædictum attornatum eorum, similiter veniunt hic. Et, quia judicium nondum inde formatum est, dies datus est partibus prædictis de judicio suo inde audiendo hic a die Paschæ in xv. dies, &c. Postea a die Paschæ in xv. dies prædictus Thomas, qui sequitur pro domino Rege, venit hic. Et prædictus Comes non venit. Et prædictus Magister Lucas, per prædictum attornatum suum, venit hic. Et, quia judicium nondum inde formatum est, dies datus est partibus prædictis de judicio suo inde audiendo hic in Octabis Sanctæ Trinitatis, &c. Postea in Octabis Sanctæ Trinitatis prædictus Thomas, qui sequitur pro domino [Rege], venit hic et prædictus Magister Lucas, per prædictum attornatum suum, venit hic. Et prædictus Thomas petit judicium pro domino Rege. Ideo consideratum est quod dominus Rex recuperet præsentationem suam ad ecclesiam prædictam versus prædictos Comitem et Magistrum Lucam. Et prædicti Comes et Magister Lucas in misericordia pro injusto impedimento, &c.

Et Sciendum quod recordum istud liberabatur in Curia Regis coram domino Rege termino Sancti Hillarii anno regni Regis nunc quintodecimo.

Here follows a writ to the Justices of the King's Bench reciting previous writ of error, "ac jam ex parte ipsius Lucæ " intellexerimus quod licet ipse recordum et processum præ- " dicta vobis liberaverit et allegaverit se per maris intemperiem " in tantum fuisse impeditum quod ad diem prædictum cum " eisdem recordo et processu coram vobis venire non potuit, " et ea occasione vos cum instantia requisiverit ut ipsum ad " errores in hac parte assignandum admitteretis, et ulterius " faceretis quod secundum legem et consuetudinem regni " nostri Angliæ in negotio prædicto fuerit faciendum, vos " tamen, considerationem ad hoc non habentes, pro eo quod " recordum et processum prædicta post terminum prædictum " vobis liberata fuerunt, ad procedendum in eodem negotio " hucusque procedere distulistis, et adhuc defertis, in ipsius " Lucæ grave damnum et præjudicium manifestum, super quo " nobis supplicavit sibi de remedio provideri, Nos volentes,

" tam pro nobis quam pro præfato Luca, in hac parte fieri quod " est justum, vobis mandamus quod, visis recordo et processu " prædictis, ipsum Lucam ad errores in hac parte coram vobis " assignandum admittatis, et ulterius in eodem negotio faciatis " prout de jure et secundum legem et consuetudinem regni " nostri Angliæ fuerit faciendum, hoc non obstante quod " eadem recordum et processus post terminum illum vobis " liberata fuerunt ut est dictum." [Dated 7 Feb., 15 E. III.]

" Et modo coram domino Rege venit prædictus Magister " Lucas et dicit quod diversimode erratum est in recordo et " processu prædictis, unde petit quod servientes domini Regis " vocentur, &c., et quod ipse possit assignare errores in præ- " dictis recordo et processu existentes, et quod justitia sibi " inde fiat, &c."

Et super hoc, vocatis Willelmo de Thorpe et Johanne de Stoweford servientibus domini Regis, &c., in quorum præsentia prædictus Magister Lucas dicit quod erratum est in hoc quod ubi dominus Rex tulit prædictum breve de *Quare impedit* versus prædictos Jacobum le Botiler et Lucam, de advocatione ecclesiæ Cnokgraffan, et sumpsit titulum suum ratione minoris ætatis heredum nuper Comitis de Loueth in manu ipsius Regis existentis quod pro titulo ad hujusmodi breve manutenendum esse non potest, et, in hoc tunc quod præfati Justiciarii super hujusmodi brevi concesserunt breve Episcopo pro domino Rege, erraverunt.

Item dicit quod in prædicta demonstratione domini Regis continetur quod, pro eo quod prædictum manerium de Esker, quod de domino Rege tenebatur in capite, fuit in manu ipsius Regis ratione minoris ætatis heredum Comitis de Loueth existentium, eidem domino Regi permittit[1] præsentare ad ecclesiam prædictam. Et sic in eadem demonstratione sumebatur alius titulus pro domino Rege quam in prædicto brevi de *Quare impedit* continebatur. Et, in hoc tunc quod præfati Justiciarii super eadem demonstratione per prædictum breve non warantizata ad judicium pro domino Rege processerunt, omnino erraverunt.

Item erratum est quod ubi dominus Rex cepit pro titulo, &c., videlicet quod ubi prædictum manerium de Esker, quod tenebatur de ipso Rege in capite tanquam de Corona, &c., de quo ipse fuit seisitus ratione minoris ætatis heredum prædicti Comitis de Loueth, et sic per prærogativam suam ipsi Regi permittit[1] præsentare ad ecclesiam prædictam, eo quod fuit de

[1] *sic in rot.* The reading should probably be pertinuit.

hereditate heredum prædicti Comitis de Loueth, ad quod prædictus Jacobus tunc dixit quod actio domini Regis per prærogativam suam in hac parte manuteneri non potuit, eo quod prædictum manerium de Esker fuit parcella Lagenæ, quæ nuper fuit in manu prædicti Comitis Marescalli, quæ devenit in manu Johannis Regis, &c., progenitoris ipsius Regis, &c., per forisfacturam dicti Comitis Marescalli, per quod non intendit quod dominus Rex virtute hujusmodi dominii aliquam prærogativam inde habere debuit, quod dominium domino Regi sic accretum prædictus Thomas, qui sequebatur pro domino Rege, non dedicendo, versus prædictum Jacobum replicavit dicendo quod ex quo idem Jacobus non dedixit quin prædictum manerium de Esker tenebatur de ipso Rege in capite ut de Corona, &c., et sic ipsi Regi per prærogativam suam ad ecclesiam prædictam pertinuit præsentare, petiit judicium pro domino Rege, ubi in prædicto recordo expresse est dedictum quod prædictum manerium de Esker tenebatur de domino Rege ut de Corona sua, super quo non dedicto præfati Justiciarii reddiderunt judicium pro domino Rege, et in hoc erraverunt.

Dicit etiam quod in recordo et processu prædictis continetur quod loquela prædicta continuata fuit de die Sancti Michaelis in xv. dies anno regni Regis nunc undecimo usque in Crastino Sancti Martini tunc proximo sequente, absque aliqua mentione facta in eisdem utrum partes prædictæ coram præfatis Justiciariis comparuerunt necne, seu quod aliquis dies datus fuit eisdem partibus, et sic loquela illa omnino tunc extitit discontinuata. Et in hoc tunc quod præfati Justiciarii postea processum inde continuaverunt, et ad judicium inde processerunt, erraverunt, &c.

Item dicit quod ad aliquos dies quos dominus Rex et prædicti Jacobus et Lucas habuerunt in Curia postquam placitaverunt intratur in recordo prædicto Dies datus est partibus prædictis, ubi ipsi qui sequebatur pro domino Rege dies dari debuerat, prout mos est. In hoc tunc quod præfati Justiciarii dederunt domino Regi diem in loquela prædicta, ut alii personæ terræ, ubi mos est per legem terræ in hujusmodi placitis dare diem illi qui sequitur pro domino Rege et non ipsi Regi, ut parti, &c., erraverunt, &c.

Dicit etiam quod non continetur in eisdem recordo et processu quod præfati Justiciarii, postquam prædictus Jacobus coram præfatis Justiciariis fecerat defaltam, recordati fuerunt illam defaltam nec iidem Justiciarii præceperunt Vicecomiti distringendum ipsum Jacobum audiendum inde judicium suum. Et sic processus ille versus ipsum Jacobum ad tunc

omnino erat discontinuatus. Et in hoc tunc quod præfati Justiciarii postea ad judicium inde reddendum pro domino Rege processerunt omnino erraverunt.

Dicit etiam quod in recordo et processu prædictis continetur quod prædictus Lucas nihil clamavit in advocatione ecclesiæ prædictæ, et quod in judicio inde reddito consideraverunt quod idem Lucas esset in misericordia. In hoc tunc quod præfati Justiciarii amerciaverunt præfatum Lucam, qui nihil clamavit in advocatione prædicta erraverunt, quos idem errores et alios in dicto recordo et processu compertos petit corrigi necnon recordum et processum prædicta ac judicium inde redditum tanquam erronea revocari et adnullari et ulterius justitiam sibi inde fieri, &c.

Et Johannes de Lincolnia, qui sequitur pro domino Rege, dicit quod non intendit quod dominus Rex ad aliqua in dicto recordo contenta, quæ prædictus Lucas assignavit pro errore, teneatur respondere, quia dicit quod, per prædictum breve per quod prædictum recordum mittitur hic in Curia, &c., supponitur recordum illud fuisse retornatum coram domino Rege in Octabis Sancti Michaelis ultimo præteritis, et, illo termino Michaelis jam transacto, modo isto termino Sancti Hillarii recordum illud liberatur hic in Curia, ita quod pro recordo, ex quo non extitit liberatum tempore per prædictum breve, &c., limitato, teneri non debeat. Et licet dominus Rex postea, per aliud breve suum, mandasset hic in Curia quod, non obstante quod prædictum recordum post terminum Sancti Michaelis prædictum extiterit liberatum, præfatus Lucas ad errores in hac parte assignandum admitteretur, Curia tamen hic ipsum Lucam ad aliquos errores in hac parte assignandum admittere[1] non debet, quia dicit quod in rotulo hic misso per præfatum Simonem Fitz Richard continetur quod prædictus Lucas nihil clamavit in advocatione ecclesiæ prædictæ nec in eadem ecclesia nisi ut rector ejusdem, et, ex quo ipse tunc nihil clamavit in eadem ecclesia, per judicium prædictum nihil amittere seu in aliquo deteriorari potuit, unde petit judicium, pro domino Rege, si ipse Lucas, qui per prædictum judicium aliquod damnum non habuit, ad aliquos errores in hac parte assignandum admitti debeat.

Et prædictus Lucas, quoad hoc quod pro domino Rege ei objicitur pro eo quod prædictum recordum non liberatur hic in Curia eo tempore per prædictum breve, &c., limitato, immo postea in alio termino, et ea de causa teneri pro recordo non debere, dicit quod quocunque tempore aliquid recordum

[1] Roll, admitti.

liberatur in Curia Regis per breve Regis, &c., et Curia inde seisitur, teneri debet pro recordo, et cum hoc dicit quod, per prædictum breve quod dominus Rex hic in Curia postea inde mandavit, idem Rex voluit quod eo non obstante quod illud recordum extitit liberatum Curiæ isto Termino Hillarii quod Justiciarii hic facerent inde justitiæ complementum, ita quod pro alio quam pro recordo teneri non potest. Et quo ad hoc quod, pro domino Rege, eidem Lucæ objicitur quod ipse ad aliquos errores inde assignandum admitti non deberet ex quo ipse nihil clamavit in advocatione ecclesiæ prædictæ, et per hoc nihil potuit inde per prædictum judicium amittere seu aliquod damnum habere, idem Lucas dicit quod ipse per judicium prædictum amotus extitit a possessione ejusdem ecclesiæ et in tantum per judicium illud damnum habuit et multum amisit, ita quod ad errores prædictos assignandum admitti debet, unde petit justitiam sibi inde fieri, &c.

Et prædictus Johannes qui sequitur pro domino Rege, salvis eidem Regi rationibus suis prædictis, dicit quod, ubi prædictus Lucas assignavit pro errore in hoc quod dominus Rex super prædicto brevi de *Quare impedit* sumpsit titulum suum ratione minoris ætatis heredum nuper Comitis de Loueth in manu Regis existentis qui non est titulus per legem terræ [ad] manutenendum hujusmodi breve, et per hoc quod Justiciarii prædicti tenuerunt inde placitum et reddiderunt judicium pro domino Rege errasse debuissent, præfati Justiciarii in hoc non erraverunt, quia dicit quod prædictum breve de *Quare impedit* non fuit tale quale supponitur per prædictum rotulum hic missum, &c. Et licet actio Regis sumpta esset super hujusmodi brevi, et prædictus Lucas nec præfatus Comes tunc præsentes in Curia ad tunc breve illud non calumniaverunt, immo illud acceptaverunt, et Justiciarii illi postea placitum super eodem brevi tenuerunt, et ad judicium processerunt, rite et bene fecerunt et non erraverunt.

Et quo ad hoc quod prædictus Lucas assignavit pro errore in hoc quod dominus Rex in demonstratione sua sumpsisse debuit alium titulum quam continebatur in prædicto brevi, &c., in hoc non est erratum, quia dicit quod ille idem titulus quem prædictus Lucas modo allegat in demonstratione Regis non fuisse warantizatum per prædictum breve de *Quare impedit*, illud idem in eodem brevi continetur de quo brevi Curia nondum certioratur, &c. Et quamvis ita esset quod alius titulus in prædicta demonstratione Regis specificaretur quam in prædicto brevi continebatur, prædictus Lucas nec præfatus Comes, tunc plenæ ætatis existentes, illud non calumniaverunt, per quod præfati Justiciarii in hoc quod placitum inde

tenuerunt et ulterius ad judicium processerunt non erraverunt, &c.

Et quo ad hoc quod præfatus Lucas assignavit pro errore quod præfati Justiciarii reddidisse debuissent judicium super eo quod non erat dedictum quod[1] prædictum manerium de Esker tenebatur de domino Rege de capite et de corona, &c., ubi in dicto rotulo hic misso continetur quod illud omnino erat dedictum, ex quo prædictus Johannes Rex in manerio illo ut parcella Lageniæ prædictæ postquam ad manum suam devenit per forisfacturam prædicti Ricardi Comitis qui de Lagenia illa fuit seisitus aliam prærogativam habere non potuit in eodem quam habuit prædictus Ricardus Comes dum illud tenuit, præfati Justiciarii in hoc non erraverunt, quia dicit quod tempore quo dominus Johannes quondam Rex Angliæ seisitus fuit de manerio de Esker, ut parcella prædictæ Lageniæ, per forisfacturam prædicti Ricardi Comitis, idem Johannes Rex potuit tunc inde seisiri in dominico et servitio, &c., et ex quo prædictus Lucas et prædictus Comes Ermoniæ non dedixit quin prædictus Petrus de Bermyngham tenuit prædictum manerium de Esker de domino Edwardo nuper Rege Angliæ avo domini Regis nunc in capite, nec quod etiam tenuit prædictum manerium de Cnokgraffan ad quod, &c., nec quod dominus Rex nunc seisitus fuit de prædictis maneriis[2] de Esker et Cnokgraffan ratione minoris ætatis heredum prædicti Comitis de Loueth, &c., prout in demonstratione Regis continebatur, et sic, utrum eadem seisina Regis nunc fuit justa vel injusta, ad ipsum Regem, ratione maneriorum prædictorum sic in manu sua existentium, ad ecclesiam prædictam pertinuit præsentare, per quod Justiciarii prædicti in hoc quod placitum inde tenuerunt non erraverunt, immo rite et legitime fecerunt.

Et quo ad hoc quod prædictus Lucas assignavit pro errore in hoc quod præfati Justiciarii processerunt ad judicium reddendum in loquela prædicta, postquam loquela illa deberet discontinuari per hoc quod loquela illa continuata fuit de die Sancti Michaelis anno regni Regis nunc undecimo usque in Crastino Sancti Martini tunc proximo sequente, absque hoc quod partes aliquæ tunc comparuerunt aut aliquis tunc dies datus fuit eisdem partibus, Justiciarii illi in hoc non erraverunt, quia dicit quod quando in aliquo recordo inter aliquas partes fit mentio de continuatione, et maxime de uno die ad

[1] Roll, ad.

[2] Roll, manerio.

alium diem in uno et eodem Termino, non potest aliter intelligi quam de die in diem. Et etiam continuatio nunquam potest esse sine apparentia partium, et, ex quo illo eodem Termino Michaelis partes prædictæ comparuerunt et datus fuit eis dies usque ad alium Terminum, prout patet in eodem recordo, non est erratum, &c.

Et quo ad hoc quod præfatus Lucas dicit quod erratum est in hoc quod præfati Justiciarii dederunt diem partibus prædictis ad aliquos dies postquam dominus Rex et prædicti Comes Ermoniæ et Lucas placitassent, &c., videlicet domino Regi ut alii personæ terræ, ubi mos est dare diem illi qui sequitur pro Rege, &c., et non domino Regi ut parti, &c., in hoc Justiciarii non erraverunt, quia dicit quod prædicti Comes Ermoniæ et Lucas fuerunt ut duæ personæ et per hoc duæ partes, et in hoc quod dies datus fuit eis ut partibus, &c., dominus Rex habuit diem per eorum adjornamentum, ita quod non oporteret quod dies aliter daretur quam partibus prædictis, &c., et ex quo ipsi erant prænominati, &c.

Et quo ad hoc quod præfatus Lucas assignavit pro errore quod præfati Justiciarii non præceperunt Vicecomiti distringere prædictum Jacobum Comitem, postquam fecerat defaltam, de audiendo judicio suo, nec defaltam illam recordati fuerunt, sed postea super hujusmodi processu sic discontinuato ad judicium processerunt, et in hoc errasse debuerunt, Justiciarii illi in hoc non erraverunt quia dicit quod, cum aliquis placitaverit cum domino Rege in placito *Quare impedit*, et postea facit defaltam, nihil aliud tunc consideratum est nisi quod procedatur ad judicium, &c., et in hoc tunc quod præfati Justiciarii postea fecerunt dilationem in negotio illo et non processerunt in continenti ad judicium hoc fuit in proficuum prædicti Lucæ, ita quod in hoc ipse Lucas nullum errorem assignare potest, &c.

Et quo ad hoc quod prædictus Lucas dicit quod erratum est in hoc quod præfati Justiciarii amerciaverunt per judicium ipsum Lucam, ex quo ipse superius nihil clamavit in advocatione ecclesiæ prædictæ, in hoc non est erratum, quia dicit quod ipse Lucas venit per magnam districtionem et ea de causa amerciatus fuit, et sic judicium inde redditum bonum est, et non erroneum, quod pro domino Regi petit affirmari et pro bono teneri, &c.

Et quia Curia vult certiorari super brevi originali super quo dominus Rex recuperavit præsentationem suam ad prædictam ecclesiam de Cnokegraffan antequam ulterius procedatur, &c., ideo mandatum est Custodi Brevium domini Regis in Communi Banco apud Dublinum quod, scrutatis brevibus

Regis sub custodia sua existentibus, et[1] de eo quod inde invenerit Regem a die Paschæ in quinque septimanas ubicunque, &c., sub sigillo suo reddat certiores,[1] &c.

On the day given the said Custos Brevium "non misit breve." There were several further adjournments and several *pluries* writs to the Custos Brevium, and several entries of "non misit breve;" but no other conclusion to the case appears on the roll.

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[1] *sic in rot.*

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INDEX OF MATTERS.

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If, after cognisance allowed to the Court of Liberty, the tenant come into the Court of Common Pleas, and allege that the bailiffs of the liberty have failed in justice towards him, and state the point with certainty, he shall have a re-summons, 366.
COMMON:
If A. grant to B. common of pasture within the metes and bounds of a certain vill, and one place in the

COMMON—*cont.*
vill be A.'s several, and another place common to others, the place which is common shall alone be charged, 360.
COMMON PLEAS:
The Court has no jurisdiction in Error from the Court of the Liberty of the Bishop of Durham, 144.
CONTEMPT:
Contempt committed by Sheriff in not obeying writ of *Supersedeas*, 88–98.
CONTRA FORMAM FEOFFAMENTI: 2, 4.
COSINAGE:
Aid of the King had, and subsequent voucher disallowed, on writ of Cosinage, 232–242.
COUNTY COURT:
Presentments of blood-shed in, 88, 91, note 1, 92.
CUSTOMS AND SERVICES:
Process on writ of, 120.

D.

DAMAGE FEASANT: 168–170.
DAMAGES:
For the defendant in *Quare impedit* when the plaintiff is non-suited, 148. *See* DETINUE; EXECUTION.
DEBT:
Action of Debt was brought by A. and B. his wife, on an obligation in which B. and her previous husband C. were obligees, and which was conditioned that the defendant E. should pay 1,000*l.* if he aliened certain manors to the disinheritance of his son. The alienation was admitted, but E. produced a release of all actions by C. The plaintiffs said there was no release as to the 1,000*l.*, and issue was joined thereon, 68–70.
DEBT—*cont.*
Action of Debt was brought by an executor in respect of the several sums of 100 marks and 25 marks, the former sum representing an obligation, after release of a certain portion, and the latter sum a loan made by the testator to the defendant. In respect of the first sum the testator's acquittance was produced and denied; in respect of the second the defendant's wager of law as to non-receipt was accepted, 194.
Process in action of, 208.
Action of Debt having been brought by a woman, her husband's release was pleaded, and she replied that he was not her husband at the time at which it was executed, whereon issue was joined, 276.
DECEIT:
Supposed plaintiff in *Quare impedit* denies suit of writ, and supposed defendant denies any deceit and alleges that he was summoned, 252.
DEED:
If in a lease by deed, made by three persons, the reversion be saved to the three and the heirs of one of them, the words applying to the one are void, and the reversion is to the three as of common right (*per* Willoughby, J.), 20–26.
If the deed of any one be pleaded and denied, and a jury find that it is "not his deed," it shall nevertheless not be cancelled except in presence of the party, even though no Attaint lie against the jury, 188.
DETINUE:
Damages may be recovered in an action of Detinue of chattels, if the chattels detained be not recovered, 30.
If, in Detinue brought in respect of a writing obligatory delivered for re-

DETINUE—*cont.*
delivery on a certain condition, it be pleaded that the condition was other than that stated, and that the delivery was to others together with the defendant, no garnishment lies as to those others, and issue is joined as to the condition, 166–168.
DIEM CLAUSIT EXTREMUM:
If it be found that a woman held jointly with her husband for life, she has livery of the lands without finding security as to her marriage, because she is not a "King's widow" in respect of such lands, 272.
DISCLAIMER:
Writ of Right on. *See* RIGHT ON DISCLAIMER.
DISCONTINUANCE:
If one be vouched by the name of A. B. of X., and process be continued by that name until he come into Court, and if he enter into warranty as A. of X., and be so described subsequently, there is no discontinuance, because the process was good as against the tenant until the vouchee entered into warranty, and good against the vouchee by the name in which he so entered, 250–252.
DOMESDAY BOOK:
Cited to prove tenure in Ancient Demesne, 346, 348.
Cited to prove tenure of the King *in capite*, 346.
Alleged by counsel, as being before the time of legal memory, to be the King's secret and not of record as between party and party, 346.
DOWER:
When the husband has aliened lands in exchange for other lands, the wife shall not have dower of both, and, when the exchange is pleaded in bar of dower of the lands aliened, there is no need to show a specialty, but issue may be joined as to whether the husband aliened simply without taking anything in exchange, 100–102.
The heir of the husband was vouched in one county, as being in the wardship of one person, and appeared, and said that part of the tenements were in the wardship of another person in another county who was not named in the voucher. Issue was joined as to whether there was a second guardian or not, and, if not, the demandant would recover against the heir, 170–172.
Voucher of two guardians in action of Dower, 188.
In action of Dower it was pleaded, as to two parts of the demand, that the wife had eloped and lived in adultery, and, as to the residue, that the husband had never been seised so that he could endow. Objection was taken that the latter part of the plea admitted the ability of the demandant to demand dower, and that therefore the first part of the plea should be discharged. This was not allowed, but the tenant was compelled to hold to one plea or the other, and averred the elopement, 222–224.
If elopement be found, demandant shall not have dower, 222, side-note.
A writ of Dower having been brought against a guardian, he made default, and maintained that the demandant could not hold to the default because he was not tenant of the freehold, but this contention was not allowed, 242.
Tenant pleaded that demandant and her husband took, in exchange for the land in respect of which dower was demanded, other land of which she was now seised. She, however, prayed judgment and seisin because

DOWER—*cont.*
the husband's seisin of the land in demand so that he could endow was not denied, and she was a purchaser by the alleged exchange. She afterwards had judgment on tenant's default, 268, 269, note 1.
The action having been brought in the Court of the Liberty of Durham, and the tenant having there alleged that the demandant had not been lawfully married, and the demandant having stated where she was married, the cause was removed into the Court of Common Pleas. The allegations having been there repeated on either side, the Archbishop of Canterbury, within whose diocese the demandant alleged the marriage, was directed to enquire and certify, 277–279, 278, note 8.
The tenant pleaded a recovery of the tenements by default in a previous action, and that the estate of the demandant's husband was mesne between a demise which was the ground of the previous action and the judgment thereon. The demandant prayed that the tenant might show his right in accordance with his writ in the previous action. In the end issue was joined on a traverse of the demise alleged in the previous action, 308, 309, note 1.
If, in Dower *unde nihil habet*, the demand be for twelve messuages and 40*s.* of rent, and the rent issue from the same messuages, *semble* that the tenant must answer as to the messuages even though the demand be abated as to the rent, 362.
See KING'S WIDOW; PLEADING.
DUBLIN:
The Justices of, or the Justices of the Bench at, 326, 373.
DUM FUIT INFRA ÆTATEM. *See* ENTRY.
DURESS. *See* NOVEL DISSEISIN.
DURHAM:
A writ of Formedon having been brought in the Court of the Liberty of the Bishop of Durham, issue was there joined on the plea (in bar) of a deed and of assets by descent in the counties of York and Lincoln. After various proceedings in the Bishop's Courts, the cause was removed into the Court of Common Pleas, whence jury process issued to the Sheriffs of York and Lincoln to try the issue joined at Durham, 142–144, 364–366.
Removal of record and process of action of Dower from the Court of the Liberty of Durham into the Court of Common Pleas, when an alleged marriage in another diocese was in dispute, 276–278, 277, note 8.

E.

ELOPEMENT. *See* DOWER.
ENTAIL:
If donees in special tail male have issue a son and heir, and that son has issue a daughter, she may inherit. Per Counsel, and not disputed, 136–138.
In Entry *ad terminum qui præteriit* there was pleaded a deed by which the demandant gave the tenements to A. and B. his wife, "et eorum "heredibus de ipsis exeuntibus vel "eorum assignatis in perpetuum," 202–204.
See SCIRE FACIAS on Fine.
ENTRY:
Voucher and Aid Prayer upon writ of, 122–124.
(*Ad communem legem.*) This is the proper writ when a remedy is sought by reversioner after the death of tenant for life who has aliened in

ENTRY—*cont.*
fee, as the writ of Entry *in consimili casu* given by the Statute Westm. 2, c. 24, is applicable only during the life of such alienor, 114–116.
(*Ad terminum qui præteriit.*) A deed was pleaded whereby the demandant gave the tenements to A. and B. his wife, "et eorum heredibus "de ipsis exeuntibus vel eorum "assignatis in perpetuum." It was replied that nothing passed by the deed, and issue was joined thereon, 202–204.
(*Dum fuit infra ætatem.*) If a husband aliene the right of his wife, who is under age, and the wife be named in the deed and make livery with him, they shall have their recovery by writ of Entry *dum fuit infra ætatem* (*per* Willoughby, J.), 24.
(*In consimili casu.*) *See* ENTRY (*ad communem legem*).
(*Sur disseisin.*) The writ being against a Prior, he alleged that the estate in respect of which the action was brought was mesne between a disseisin effected on him and execution sued on his recovery by assise. It was alleged in reply that the demandant's ancestor, who was lord paramount, had subsequently entered upon the tenements because the inferior lord who held of him had omitted so to enter when the tenants of the latter aliened them, without license, in mortmain, and that the Prior's recovery had thus been annulled and defeated. The Prior rejoined that the alienors held of him and not of the mesne lord mentioned or of the demandant's ancestor, and thereupon issue was joined, 132–134.
A., the tenant, made default after default upon a writ *de quibus.* B., who alleged that he had leased to A. for life, was thereupon admitted to defend, and vouched. The vouchee entered into warranty and pleaded the demandant's release of actions, which, however, was found to be not the demandant's deed. Judgment was thereupon given that the demandant should recover against A., and that A. should recover over, to the value, against the vouchee, to hold in the right of B., 188–190.

ERROR:
If, before judgment in the Court of Common Pleas, the matter be brought before Parliament, and it be there agreed that a certain judgment is to be given, the judgment is that of the Court of Common Pleas and a writ of Error thereon, returnable in the Court of King's Bench, lies as in other cases, 292.
Quære, if Parliament agree, in accordance with the Statute 14 Ed. III., c. 5, that a particular judgment is to be given in the Court of Common Pleas, and the Court do not give the judgment directed, whether there is *ipso facto* error, 296.
Writ of Error, returnable in the King's Bench in England in respect of a judgment given by the Justices of Dublin (according to a report) or the Justices of the Bench at Dublin (according to the record), 326, 373.
Reversioner, though not admitted to defend his right in Court of first instance, may afterwards have writ of Error to reverse judgment against tenant for life, 330, 336.

ESCHEAT:
If A. hold of B., and commit felony, and be attainted, B. has a cause for entering upon the whole of the land which A. held of him on the day of the commission of the

ESCHEAT—*cont.*
felony or at any subsequent time, 32.

A. brought a writ of Escheat against B. in respect of tenements in Bristol, on the ground of a felony committed by C. B. did not deny that the tenements had been held of A., but pleaded that Bristol was the King's free borough, that all escheats were the King's, of whomsoever the tenements might be held, and that the King had entered and enfeoffed him. A. denied that the King had had the escheats from all time, and issue was joined thereon, 184–188.

See PLEADING.

ESSOIN:
In action of Dower tenant is essoined, after voucher of two guardians and process sued as far as the *Sequatur suo periculo*, when one was summoned, but the writ was not served on the other. *Quære* the further process, 188.

ESTATE:
Action of Waste against one Peter, to whom, as alleged, tenements had been granted "ad terminum vitæ "ipsius Petri, et, post decessum "ejusdem Petri, cuicunque ipse "Petrus tenementa prædicta in "vita sua assignare seu legare "per unum annum post ejus "mortem tenenda voluerit," 270–271, note 9.

ESTOPPEL:
In a *Jurata utrum*, brought by the Warden of a Hospital, there was pleaded the deed of the plaintiff's predecessor, and of the Brethren and Sisters under their common seal, by which the tenements were aliened in fee to one whose estate the defendant had. The plaintiff

ESTOPPEL—*cont.*
replied that the Warden was appointed at the King's pleasure, and that at the time of the alienation the Brethren and Sisters were not perpetual, but persons who bought corodies and who abode in the Hospital and departed at their pleasure. Issue was joined as to whether they were perpetual Brethren and Sisters or not, 48–50, 51, note 1.

If A. bring a writ against B. in respect of certain tenements, and, pending the writ, C. bring a writ against B. in respect of the same tenements, and to the latter writ B. answer as tenant, B. is not precluded from pleading as against A. that he is not tenant, 76.

ESTOVERS: 108, 112.
See PRESCRIPTION.

EXCHEQUER:
Proceedings on writ of *Ex parte* in the, 192.

EXECUTION:
Three parceners having recovered by Assise of Mort d'Ancestor, two died before execution, and the third sued alone to have the whole of the damages, but it was held that she could not have execution for more than a third, 34–36.

A recognisance having been made to two persons of whom one died, execution for the whole was granted to the survivor, 252.

The Sheriff having returned that the obligor in a Statute Merchant was dead, the obligee had execution in respect of all the lands which the obligor had at the time of the recognisance or at any time since. Moreover, the lands being in two different counties, execution was awarded as to a moiety in one

EXECUTION—*cont.*
county, and as to the other moiety in the other county, 326.
See AUDITA QUERELA; STATUTE MERCHANT.
EXECUTOR:
Quære whether averment of non-receipt of a loan alleged to have been made by a testator lies against an executor, 194.
See STATUTE MERCHANT.
EX PARTE:
Proceedings on writ of, in the Exchequer, 192.
EYRE:
If an Eyre be proclaimed in any County, and a writ be sent to the Justices of the Common Bench directing them to adjourn all pleas of that County into the Eyre, the Common Bench cannot take any further action in relation to such pleas; and it was said that the Sheriff ought to return all writs returnable in the Common Bench into the Eyre, by force of the Proclamation, 312.

F.

FELONY. *See* ATTAINDER.
FINE OF LANDS, &c.:
Render by A. to B. in tail, with remainder to C. in fee simple, is good, but if it be added "rendering "a certain rent to A.," the fine is inadmissible as to the rent, 34.
Husband and wife cannot by fine grant and release their interest to A., for the life of the wife, and have grant from A. of a rentcharge for the life of the wife, because a fine must be final, and must show what becomes of the remainder of the estate, 74–76.
A render cannot be of part for life and of part in fee tail, but the
FINE OF LANDS, &c.—*cont.*
parcels may be severed by the *habendum et tenendum*, 84.
If a fine *sur don grant et render* be alleged in support of a voucher, and it be not stated that the renderor was seised, the intendment will nevertheless be that there was transmutation of possession by the render, but the seisin can be traversed, 152.
Though there be no clause of warranty in a fine, it will nevertheless give a tenant a voucher, and the plea as to no warranty will lie in the mouth of the vouchee, 152–154.
A fine by which A. gave two parts of certain tenements to B., and granted that the third part, of which A. had the reversion, should remain to B., was accepted, 358–360.
See SCIRE FACIAS on Fine.
FOREST LAWS:
Punishment for breach of, 258–260.
FORFEITURE:
If lands, &c., be seized into the King's hand on a forfeiture, and there be subsequently an ordinance or statute by which restoration is to be made to the persons who have forfeited and their heirs, the restoration is not complete without actual corporal restitution out of the King's hand; and, if before suit made to have livery the King has aliened to another, it is necessary that there should be a writ to re-seize the lands into the King's hand, and that livery should afterwards be made to the party, 238.
FORFEITURE OF MARRIAGE:
If a marriage be tendered when the ward is under age, and he marry when of full age, the lord shall have the forfeiture (*per* Herle, as alleged), 192.
Issue on priority of feoffment, when admissible, 192, 366.

FORMEDON:
Action of, in respect of a weir, &c., 40.
For rent, 76.
In the Court of the Liberty of the Bishop of Durham, 142–144, 364–366.
Voucher in, 150–156.
Where partition had been made between parceners, and a deed of the demandant's ancestor was pleaded and denied, issue was joined thereon, 172.
See ABATEMENT OF WRITS; VIEW.
FRANCHISE. *See* COGNISANCE OF PLEAS.

G.

GRACE, DAY OF:
Refused, 18.
GUARDIAN. *See* DOWER.

H.

HERIOT:
One may have a heriot by taking, but not by an action (*per* Willoughby, J.), 112.

I.

IDENTITY:
One who had been outlawed, in action of Account, suggested in Chancery that he was not the same person as the defendant in the action, and obtained a writ to the Justices. The plaintiff in Account admitted that he was not the same person, but the Court would not take notice of the admission, because the action between the parties was at an end, and tried the question of identity by jury for the advantage of the King, 188.

INDICTORS:
Alleged custom of Justices to go to indictors to encourage them, 260.
INFANT:
One having, while an infant, pleaded the outlawry of the plaintiff, in bar of assise, may subsequently abandon that plea, and plead in bar plaintiff's release of actions, 6–14, 66–68.
If a husband aliene the right of his wife, who is under age, and the wife be named in the deed and make livery with him, they shall have their recovery by writ of Entry *dum fuit infra ætatem* (*per* Willoughby, J.), 24.
If an Assise find that an infant has disseised *vi et armis*, he shall not be sent to prison as one of full age would, 266.
IRELAND:
Writ of Error to the Justices of Dublin, or of the Bench at Dublin, returnable in the Court of King's Bench in England, 326, 373.

J.

JUDGMENT:
On a writ of Wardship a verdict was given for the plaintiff at *Nisi prius*. It was subsequently alleged in Banc that, after the verdict, the defendant had married the infant, and the plaintiff at first prayed judgment, and in addition a writ to enquire as to the value of the marriage. The Court was of opinion that no judgment could be given but one on the verdict, which was then prayed on behalf of the plaintiff, and given, 224–228.
If Parliament agree that a particular judgment is to be given in the Court of Common Pleas, and it be there given, it is the judgment of

JUDGMENT—*cont.*
the Court of Common Pleas, and not of Parliament, 292.
JURATA UTRUM. *See* UTRUM.

K.

KING, THE:
It is the King's right to be answered where he pleases, as *e.g.*, in the Court of Common Pleas instead of in the Court of King's Bench (*per* Willoughby, J.), 94.
If one of two executors have execution on a Statute Merchant, in which the testator was obligee, and be an outlaw, and the King seize the land, the freeholder cannot have his land again without petition to the King; and this is so even though the recognisance be to the testator and another, and the heirs of the other, and the other release to the executor, 340.
If a termor be outlawed, and the King seize the land, the reversioner cannot regain it without petition to the King, 340.
Tenure of the King *in capite, ut de corona*, and otherwise, 332, 334–336, 344-346 (note), 377, 378, 381.
When the King may not enter for alienation without license, 344.
See FORFEITURE.
KING'S BENCH:
Pleas of land cannot be pleaded in the Court of, 144.
The Chief Justice may be tried, for perversion and sale of the law, or any trespass against the King, in a Court of Oyer and Terminer, 258.
KING'S WIDOW:
If a woman, being a "King's widow," be endowed of a great inheritance, she shall come into Chancery in person, and give security as to her marriage; but, if the inheritance be small, the Escheator shall take security when he delivers the dower, 272.
A woman is not a "King's widow" in respect of lands which she held jointly with her husband for life, 272.

L.

LANCASTER:
Sheriff in fee, and Under Sheriff of, and County Court of, 88–98.
LAY FEE:
See ATTACHMENT ON PROHIBITION.
LEASE:
If there be a lease by deed, made by three persons, saving the reversion to the three and the heirs of one of them, the words applying to the one are void, and the reversion is to the three, as of common right (*per* Willoughby, J.), 20–26.
LIBERTY:
Court of. *See* COGNISANCE OF PLEAS.
Answer of bailiff of, to a *Scire facias*, as returned by Sheriff, 242.
Answer of bailiff of, to a *Capias*, as returned by Sheriff, 268.
If a re-summons out of a Liberty be prayed, cause must be shown, 316.
LIMITATION:
The writ of *Quare impedit* is not subject to limitation, and presentation made before the time of legal memory may be alleged, 160.
LIVERY:
See KING'S WIDOW.
LONDON:
Writ of Right in the Guildhall of, 248–250.

M.

MESNE:
Recovery of acquittal of services after verdict, 54.
It is a good plea for the mesne that the tenements are without the fee and seignory of the supposed lord paramount, even though the mesne may have bound himself to acquit the plaintiff against all persons, 146–148.
If, in Mesne, the defendant plead that the plaintiff was not distrained through his default, it is an admission of the defendant's liability to acquit of services, and judgment shall be given to that effect, 178–180, 316.
MILL:
Query touching, 278.
MISNOMER:
In assise a disseisor cannot plead misnomer of a vill, or mistake in any name except his own, 82–84.
MORT D'ANCESTOR, ASSISE OF:
Execution for damages in. *See* EXECUTION.
Pleadings in. *See* PLEADING.
MORTMAIN:
See ENTRY (*sur disseisin*).

N.

NE INJUSTE VEXES: 2.
NISI PRIUS:
Attorney at, 156.
After verdict for the tenant at *Nisi prius*, the demandant was nonsuited in the Court of Common Pleas, but the tenant, nevertheless, prayed judgment on the verdict, 156.
Judgment on verdict at. *See* JUDGMENT.
NOTARY:
Attachment of, on suspicion, 202.
NOVEL DISSEISIN:
Assise of, 6, 66, 80.
Plaint for plough-service abated, 124.
Pleadings in Novel Disseisin in relation to the Statutes 13 Ed. I. (Westm. 2), c. 1, and 27 Ed. I. Stat. 1 (*De finibus levatis*), c. 1, 254–256, 306.
If the Assise find that the defendants have disseised *vi et armis*, they shall be sent to prison if of full age, but not if under age, 266.
If one seised through execution on a Statute Merchant, swear, under duress by the obligor, to surrender the land to him, and do afterwards when at liberty surrender, it is a disseisin on the part of the obligor, and the obligee shall recover by assise. But if, under duress, the obligee has also sworn to execute a release of actions, and has when at liberty executed it, there shall be a Certificate on the release, 338–340.
See ASSISE; PLEADING.

O.

OUTLAWRY:
A. (executor of B.), having had execution on a Statute Merchant, the ter-tenants, who had been ousted, afterwards alleged that he had been outlawed before execution sued, and prayed restitution of the lands. It was held that the outlawry could not discharge the lands, or enure to the advantage of the ter-tenants, 38–40.

OUTLAWRY—*cont.*

Proceedings to outlawry after conviction of Trespass, and their difference in the Courts of King's Bench and Common Pleas, 156–158.

Outlawry having been pronounced against A. in an action of Account, the person outlawed suggested in Chancery that he was not the defendant in Account, and he obtained a writ to the Justices. The plaintiff in Account admitted that the person outlawed was not the defendant. The Court, however, would not take notice of the admission, because the action between the parties was at an end, and tried the question of identity by jury, for the advantage of the King, 188.

OYER AND TERMINER:

Commission to try Chief Justice Willoughby for perverting and selling the law, 258–262.

P.

PARCENERS:

See EXECUTION.

PARLIAMENT:

See ERROR.

PARSON IMPARSONEE:

Defendant in *Quare impedit*, 328, 334.

PAVAGE: 112.

PER QUÆ SERVITIA:

Pleadings in, 250, 272–274.

PLEADING:

(Assise of Mort d'Ancestor.) If, when the assise is brought for rent, the tenant plead *Hors de son fee*, and the demandant abide judgment as to whether he ought to show any title other than that which is in his writ, and there be thereupon an adjournment into the Common Bench, *quære* whether the demandant can subsequently plead a deed to show that the land is within his fee, 206–208.

(Assise of Novel Disseisin.) Defendant in assise, having pleaded in bar the outlawry of the plaintiff, subsequently, after an adjournment, pleaded a release of all actions executed by the plaintiff. It was objected that he could not be admitted to plead the second bar and must maintain the first by record. It was held that he could plead the deed, because he was under age at the time at which he pleaded a record of outlawry in bar, 6–14, 66–68.

A defendant pleaded joint-tenancy with A. who was named in the writ, and with B. who was not named in the writ, after the assise had been awarded against A. by default. Notwithstanding the possible consequences to A., the plaintiff's averment that B. had nothing in the tenements was admitted, and process issued against B. under the Statute *De conjunctim feoffatis* 80–84.

A disseisor cannot plead misnomer of a vill, or a mistake in any name except his own (*per* Shardelowe), 82–84.

Pleadings in relation to the Statutes 13 Ed. I. (Westm. 2), c. 1, and 27 Ed. I.. Stat. 1 (*De finibus levatis*), c. 1, 254–256.

(*Cessavit.*) Averment as to quantity of services admitted, notwithstanding the deed of a feoffor, who was, however, a stranger to the demandant, 2–6, 56.

(Dower.) If exchange be pleaded

PLEADING—*cont.*
in bar of dower there is no need to show a specialty, 100–102.
If, as to part of the demand, the elopement of the wife and her subsequent adultery be pleaded, and as to another part it be pleaded that the husband was never seised so that he could endow, the tenant cannot have both pleas, and must hold to one or the other; but the admission of her ability to demand dower in the second plea does not preclude the tenant from averring the first, 222–224.
(Error.) Pleadings on a writ of Error returnable in the Court of King's Bench in respect of judgment in an action of Formedon in the Court of Common Pleas, 288–300.
(Writ of Entry.) If the demandant count of the seisin of his ancestor in the reign of a particular King he cannot amend his count by alleging the seisin to have been in the time of another King, 140–142.
(Writ of Escheat.) It is not sufficient to plead that a tenant attainted for felony did not hold of the lord on the day on which the felony was committed, but it is necessary to add "nor at any time since," 32.
Though it may not be necessary to allege the taking of esplees, the count is none the less good if it be alleged, 58.
A fine was levied whereby A. acknowledged the right of B., and B. granted and rendered to A. in tail, remainder to C. in tail, remainder to the right heirs of A. D. as remainder man, as right heir of A., enfeoffs E. It is alleged that A. in fact died without heir, being an alien by birth, and having no issue. *Quære* can E. plead the entail to save the escheat? 58–66.

PLEADING—*cont.*
(Mesne.) It is a good plea that the tenements are without the fee and seignory of the supposed lord paramount, and issue may be joined thereon, even though the mesne may have bound himself to acquit the plaintiff against all persons, 146–148.
If the defendant plead that the plaintiff was not distrained through his default, it is an admission of liability to acquit, and judgment shall be given accordingly, 178–180.
(Trespass.) A defendant cannot justify without avowing the particular act surmised against him, 110.
A writ having been brought against three persons for non-repair of sea-walls, one came on the first day, and would have pleaded, but was not admitted to do so in the absence of the others, 246.
(Wardship.) If the wardship both of the lands and of the body be in demand, and the defendant plead as to the lands that the tenure is in socage, the plea affects the whole demand, and he cannot as to the body vouch a lessor who is alleged to have leased the wardship to him and of whom the infant's ancestor is alleged to have held in knight-service, 76–78.
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Process in *Quare impedit* against husband and wife, when the husband appears and the wife makes default, 200, 274.
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R.

RATIONABILIBUS DIVISIS. *See* RIGHT DE RATIONABILIBUS DIVISIS.
RAVISHMENT OF WARD:
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RAVISHMENT OF WARD—*cont.*
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3 Ed. I. (Westm. 1), c. 40, 84, 240, 250, 292, 296.
6 Ed. I. (Gloucester), c. 1, 8.
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7 Ed. I. (*De Religiosis*), 134.
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14 Ed. II. (*Statutum de Vicecomitibus, &c.*), 118.
17 Ed. II. (*Prærogativa Regis*), c. 4, 272.
14 Ed. III., Stat. 1, c. 5, 296.
14 Ed. III, Stat. 1, c. 17, 42, 46.
STATUTE MERCHANT:
Execution having been sued upon a Statute Merchant, the Sheriff returned that the obligor was dead. The ter-tenant subsequently produced a writ from the Chancery setting forth that there was a deed of defeasance, and thereupon a *Supersedeas* issued to stay execution, and a *Scire facias* against the obligee's executors to cause them to answer as to the deed, 30.
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V.

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VOUCHER:
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